TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. 188.

WILLIAM H. H. GLEASON, PLAINTIFF IN ERROR,

vs.

EDWARD L. WHITE.

IN ERROR TO THE SUPREME COURT OF THE STATE OF FLORIDA.

FILED FEBRUARY 8, 1904.

(19,232.)

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JULY 5, 1904.

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1 Be it remembered, that on the 11th day of June, A. D. 1902, at a regular term of the supreme court of the State of Florida, came the plaintiff in error W. H. H. Gleason, by counsel, and filed in the clerk's office of the supreme court of the State of Florida a transcript of the record of the proceedings and judgment of the circuit court of Florida, for Dade county, in a certain cause wherein W. H. H. Gleason was plaintiff and E. L. White was defendant, and of the writ of error therein from the judgment of the circuit court therein rendered, which said transcript of the record of the cause aforesaid and subsequent proceedings to judgment and writ of error therefrom is in the words and figures as follows, to-wit:

Transcript of record of proceedings in the circuit court of Dade county, Florida, in the suit of W. H. H. Gleason *versus* E. L. White, therein pending.

On the 28th day of November, 1898, the plaintiff filed his præcipe for summons *ad respondendum* to defendant.

On the 28th day of November, 1898, summons *ad respondendum* issued.

On the 29th day of November, 1898, service of summons was made on the defendant.

On the 5th day of December, 1898, the plaintiff filed his præcipe for alias summons *ad respondendum* in the words and figures following:

Præcipe for Summons.

In the Circuit Court of Florida, 7th Judicial Circuit, in and for Dade County.

2 W. H. H. GLEASON, Plaintiff,
vs.
E. L. WHITE, Defendant. } Ejectment.

The clerk of said above entitled court will please issue alias summons *ad respondendum* to the defendant named in above stated cause, returnable to the rule day in January, A. D. 1899, in an action of ejectment, damages three hundred dollars.

ROBBINS & GRAHAM,
Attorneys for Plaintiff.

In Circuit Court of the Seventh Judicial Circuit of Florida in and for Dade County, A. D. 1898.

W. H. H. GLEASON
vs.
E. L. WHITE. } Ejectment.

Statement Required by Rule 83 of the Rules of the Circuit Courts in Common Law Actions.

The property from which plaintiff seeks to eject the defendant in this cause is described as follows: All of lot one of section nineteen (19) in township fifty-three (53), south of range forty-two east according to a United States survey made in 1874 excepting a five acre tract and a twenty-five acre tract out of said lot which the defendant has contracted to sell to one W. B. Voorhees; said five acre tract, which is excepted, is described as follows: Begin on the west line of lot one of said section nineteen, according to said U. S. survey, at the northeast corner of lot five of said section; run south ten chains; thence east five chains; thence north ten chains; and thence west five chains to place of beginning. And said twenty-five acre tract which is excepted is described as follows: Beginning on the west line of said lot one of said section nineteen at the northeast corner of lot five of said section, same being also the southeast corner of lot two of said section; thence run north ten chains; thence run east to the waters of Biscayne bay; thence run southerly along the low water mark of said bay to a point east of the point of beginning; thence run west to point of beginning.

Plaintiff also seeks to eject the defendant from the fractional south half of the southeast quarter of lot five of said section 19 in township 53, south of range 42 east, according to a United States survey made in 1874.

All of the land described in this statement being a part of lot one of section nineteen in township 53, south of range 42 east, according to the original U. S. survey made in 1845 and patent issued to W. H. Gleason, the father of plaintiff, in accordance with said original U. S. survey. Plaintiff claims the sum of three hundred dollars as mesne profits from the defendant E. L. White.

ROBBINS & GRAHAM,
Attorneys for Plaintiff.

On the 5th day of December, 1898, alias summons *ad respondendum* issued, in the words and figures following:

Alias Summons ad Res.

4 THE STATE OF FLORIDA, }
County of Dade. }

To all and singular the sheriffs of the State of Florida, Greeting:

We command you to summon E. L. White, if he be found within the State of Florida, personally to be and appear before the judge of our circuit court for Dade county, at the court house in Juno on the first Monday in January next, being a rule day of our said court, and on the second day of Janaary, 1899, to answer W. H. H. Gleason in an action of ejectment, damages three hundred dollars and have then and there this writ.

Witness A. F. Quinby, clerk of said circuit court for the county of Dade, and the seal of said court, at Juno aforesaid, on this fifth day of December, A. D. 1898.

[SEAL.] A. F. QUINBY, *Clerk.*

In the Circuit Court of the Seventh Judicial Circuit of Florida in and for Dade County, A. D. 1898.

W. H. H. GLEASON }
vs. } Ejectment.
E. L. WHITE. }

Statement Required by Rule 85 of the Rules of the Circuit Courts in Common Law Actions.

The property from which plaintiff seeks to eject the defendant in this cause is described as follows: All of lot one of section nineteen (19) in township fifty-three (53) made in 1874, excepting a five acre tract and a twenty-five acre tract out of said lot,
5 which the defendant has contracted to sell to one W. B Voorhees; said five acre tract, which is excepted, is described as follows: Begin on the west line of lot one of said section nineteen, according to said U. S. survey, at the northeast corner of lot five of said section; run south ten chains; thence east five chains, thence north ten chains; thence west five chains to place of beginning. And said twenty-five acre tract which is excepted is described as follows: Beginning on the west line of said lot one of said section nineteen at the northeast corner of lot five of said section, same being also the southeast corner of lot two of said section; thence run north ten chains; thence run east to the waters of Biscayne bay; thence run southerly along the low water mark of said bay to a point east of the point of beginning; thence run west to point of beginning.

Plaintiff also seeks to eject the defendant from the fractional south half of the southeast quarter of lot five of said section 19 township 53, south of range 42 east, according to a United States survey made in 1874.

All of the land described in this statement being a part of lot one of section nineteen in township 53, south of range 42 east, according to the original U. S. survey made in 1845 and patent issued to W. H. Gleason, the father of plaintiff, in accordance with said original U. S. survey. Plaintiff claims the sum of three hundred dollars as mesne profits from the defendant E. L. White.

ROBBINS & GRAHAM,
Attorneys for Plaintiff.

On the 14th day of December, 1898, the defendant filed his appearance.

6 On the 2nd day of January, 1899, plaintiff filed his declaration in the words and figures following:

In Circuit Court of the Seventh Judicial Circuit of Florida in and for Dade County.

W. H. H. GLEASON
vs.
E. L. WHITE. } Ejectment.

W. H. H. Gleason, by his attorneys, Robbins & Graham, sues E. L. White in an action of ejectment:

Because the said defendant is in possession of a certain tract or parcel of land situate, lying and being in Dade county, Florida, known and described as follows: All of lot one of section nineteen in township fifty-three, south of range forty-two east, according to a United States survey made in 1874, excepting a five acre tract and a twenty-five acre tract out of said lot, which the said defendant has contracted to sell to one W. B. Voorhees. Said five acre tract which is excepted is described as follows: Begin on the west line of lot one of said section nineteen, according to said U. S. survey, at the northeast corner of lot five of said section; run south ten chains; thence east five chains thence north ten chains; and thence west five chains to place of beginning. And said twenty-five acre tract which is excepted is described as follows: Beginning on the west line of said lot one of said section nineteen at the northeast corner of lot five of said section, same being also the southeast corner of lot two of said section; thence run north ten chains; thence run east to the waters of Biscayne bay; thence run southerly along the low water mark of said bay to a point east of the
7 point of beginning; thence run west to point of beginning. Also fractional south half of southeast quarter of lot five of said section nineteen according to a United States survey made in

1874. All of the above described land being a part of lot one of said section nineteen according to the original survey made by the United States in 1845 and patent issued to W. H. Gleason in accordance with said survey. The above described land contains about thirty-eight acres to which the said plaintiff claims title; and the said defendant E. L. White has received the profits of said land since on or about the 1st day of April, A. D. 1898, of the yearly value of three hundred dollars, and refuses to deliver possession *to* said land to the said plaintiff, or to pay him the profits thereof.

ROBBINS & GRAHAM,
Attorneys for Plaintiff.

On the 6th day of February, 1899, the defendant filed his plea in the words and figures following:

In Circuit Court, 7th Judicial Circuit, Dade County, Florida.

W. H. H. GLEASON
vs.
E. L. WHITE. } Ejectment. Plea.

Now comes the defendant in the above stated cause by *their* attorney at law G. A. Worley, and for plea and answer to said cause says:

They are not guilty of the wrongs and injuries complained of in plaintiff's declaration.

G. A. WORLEY,
Defendant's Attorney.

STATE OF FLORIDA, }
County of Dade. }

Before me, the subscriber, personally appeared G. A. Worley, to me well known and who being duly sworn says that he is attorney for the defendants in the above stated cause, and that the above and foregoing plea is true.

G. A. WORLEY.

Sworn to and subscribed before me this 6th day of February, A. D. 1899.

A. E. HEYSER,
[SEAL.] *County Judge.*

On the 18th day of January, 1900, the plaintiff filed his notice of motion to withdraw replication and file amended declaration, in the words and figures following:

In Circuit Court of the Seventh Judicial Circuit of Florida in and for Dade County.

W. H. H. GLEASON
vs.
E. L. WHITE. } Ejectment.

To P. W. White and George A. Worley, attorneys for defendant:

You are hereby notified that on Tuesday, the 23rd day of January, A. D. 1900, we will, at Titusville, Florida, or wherever the court will be on that date, call up our motion for leave to withdraw the replication filed on behalf of the plaintiff herein, and for leave to file an amended declaration in this cause.

9 A copy of said motion and of the amended declaration we shall desire leave to file is attached hereto.

ROBBINS & GRAHAM,
Attorneys for Plaintiff.

Miami, Florida, January 16th, 1900.

A true copy of the foregoing notice, also a copy of the motion mentioned and amended declaration was handed to Geo. A. Worley personally in his office at Miami, Florida, on this 17th day of January, A. D. 1900.

WALTER S. GRAHAM.

On the 18th day of January, 1900, the plaintiff filed his motion to withdraw replication and file amended declaration, in the words and figures following:

In Circuit Court of the Seventh Judicial Circuit of Florida in and for Dade County.

W. H. H. GLEASON
vs.
E. L. WHITE.

Motion for Leave to Withdraw Replication and File an Amended Declaration.

Now comes the plaintiff, by his attorneys, Robbins & Graham, and asks leave of the court to withdraw the replication filed on behalf of the plaintiff herein, and also for leave to file an amended declaration in this cause.

ROBBINS & GRAHAM,
Attorneys for Plaintiff.

Miami, Florida, Jan. 16th, 1900.

10 The foregoing motion is hereby granted and plaintiff is allowed to withdraw his joinder of issue and to file an amended declaration herein.

Done and ordered at chambers at Titusville, Fla., this 23rd day of January, 1900.

MINOR S. JONES,
Judge of the Circuit Court.

On the 1st day of February, 1900, the plaintiff filed his motion of withdrawal of replication and filing of amended declaration, in the words and figures following:

In Circuit Court of the Seventh Judicial Circuit of Florida in and for Dade County.

W. H. H. GLEASON
vs.
E. L. WHITE.

To P. W. White and George A. Worley, attorneys for defendant:

You are hereby notified that in accordance with leave granted us by the court by its order made on January 23rd, 1900, we have withdrawn our replication filed in this cause and have also filed an amended declaration herein.

Dated at Miami, Florida, this 29th day of January, A. D. 1900.

ROBBINS & GRAHAM,
Attorneys for Plaintiff.

I hereby accept service of the foregoing notice this 29th day of January, A. D. 1900.

G. A. WORLEY,
Of Counsel for Defendants.

11 On the 26th day of January, 1900, the plaintiff by leave of the court filed the following amended declaration:

In Circuit Court of the Seventh Judicial Circuit of Florida in and for Dade County.

W. H. H. GLEASON
vs.
E. L. WHITE. } Ejectment.

W. H. H. Gleason by his attorneys, Robbins & Graham, sues E. L. White in an action of ejectment:

Because the said defendant is in possession of a certain tract or parcel of land situate, lying and being in Dade county, Florida,

known and described as follows: All of lot one of section nineteen in township fifty-three, south of range forty-two east, according to a United States survey made in 1874, excepting a five acre tract and a twenty-five acre tract out of said lot, which the defendant contracted to sell to one W. B. Voorhees. Said five acre tract which is excepted is described as follows: Begin on the west line of lot one of said section nineteen, according to said U. S. survey at the northeast corner of lot five of said section; run south ten chains; thence east five chains; thence north ten chains; thence west five chains to place of beginning. And said twenty-five acre tract which is excepted is described as follows: Beginning on the west line of said lot one of section nineteen at the northeast corner of lot five of said section, same being also the southeast corner of lot two of said section; thence run north ten chains; thence run east to the waters of Biscayne bay; thence run southerly along the low water mark of said bay to a point east of the point of beginning; thence run west to point of beginning.

And because said defendant is also in possession of the fractional south half of the southeast quarter of said lot five of said sec-
12 tion nineteen, according to said U. S. survey made in 1874.

The foregoing described land which the defendant is in possession of, contains in the aggregate thirty-eight acres, more or less, and is all embraced in and is all a part of lot one of said section nineteen according to the original United States survey made in the year 1845, and the patent issued in conformity with said original survey; and plaintiff claims title to all of said lands as being a part of lot one of said section nineteen according to said original survey of 1845.

And the said E. L. White, the said defendant has received the profits of said land since on or about the 1st day of April, A. D. 1898, of the yearly value of three hundred dollars, and refuses to deliver possession to said land to the said plaintiff, or to pay him the profits thereof.

ROBBINS & GRAHAM,
Attorneys for Plaintiff.

The case having been submitted to the court for trial there was entered in the court minutes upon the 4th day of December, 1901, the following findings and verdict:

In Circuit Court of the 7th Judicial Circuit of the State of Florida, in and for the County of Dade.

W. H. H. GLEASON
vs. } Ejectment.
E. L. WHITE.

This cause coming on to be tried before the court without a jury, pursuant to the agreement of counsel filed in said cause at
13 the adjourned term of the Brevard circuit court held at Titusville, Florida, Jan. 1st, 1901; and the court upon due con-

sideration thereof, after a view of the premises, and after hearing the evidence and agreement of counsel, and after taking said cause under advisement, finds as follows:

That the plaintiff has the fee simple, title and the right of possession in and to all of lot one of section nineteen in township fifty-three south, of range forty-two east, according to a United States survey made in 1874, excepting a five acre tract and a twenty-five acre tract, which defendant contracted to sell Voorhees; said five acre tract, which is exc*p*eted, is described as follows: Begin on the west line of lot one of said section nineteen according to the said U. S. survey, at the northeast corner of lot five of said section; run south ten chains; thence east five chains; thence north ten chains; thence west five chains to place of beginning; and the said twenty-five acre tract which is excepted, is described as follows: Beginning on the west line of said lot one of said section nineteen at the northeast corner of lot five of said section; thence run north ten chains; thence run east to the shore of Biscayne bay; thence run southerly along the low water mark of said bay to a point east to the point of beginning. The lands of which the court find the right of possession in the plaintiff containing 35.80/100 acres, more or less, and that defendant is guilty of wrongfully withholding said lands from the plaintiff.

The court further finds the defendant not guilty as to the part of lot five of said section nineteen, described in plaintiff's declaration being the fractional south half of the southeast quarter of said lot five.

14 Findings made and filed at the fall term of the circuit court of Dade county, Miami, Florida, December 4th, A. D. 1901.

MINOR S. JONES,
Judge 7th Circuit of Florida.

On the 4th day of December, 1901, the plaintiff filed his motion for a new trial which with the order of the court made thereon *in* in the words and figures following:

In Circuit Court, Dade County.

W. H. H. GLEASON
vs.
E. L. WHITE.

Now comes the plaintiff by his attorneys and excepts to so much of the court's findings as holds that the defendant is not guilty as to the part of lot 5, sec. 19, described in plaintiff's declaration, being the fractional south half of the southeast quarter of said lot 5, and moves the court to set aside the said finding and award a new trial on the following grounds, to-wit:

(1.) The finding is contrary to law.

(2.) The finding is contrary to the evidence applicable to the issues made by the pleadings.

(3.) The declaration avers that the land found for the defendant is a part of lot 1, sec. 19, T. 53 S. R. 42 E., according to the U. S. survey of 1845, and that defendants *are* in possession thereof, and these allegations are admitted by the plea of not guilty, and the evidence shows title in the plaintiff and right of possession of all of lot 1, sec. 19 as per U. S. survey of 1845.

ROBBINS & GRAHAM,
Att'ys for Pl'ff.

Motion denied and pl'ff excepts.
Dec. 4, 1901.

MINOR S. JONES, *Judge.*

15 On the 4th day of December, 1901, the following order as to bill of exceptions was filed:

In Circuit Court, Dade County.

W. H. H. GLEASON
vs.
E. L. WHITE.

Plaintiff is granted sixty days from the entry of the judgment in the above cause to make up and settle a bill of exceptions.

Done and ordered at Miami, Fla., this 4th day of December, A. D. 1901.

MINOR S. JONES, *Judge.*

On the 12th day of December, 1901, the following judgment was entered upon the court's verdict and findings:

In Circuit Court of the 7th Judicial Circuit of the State of Florida in and for the County of Dade.

W. H. H. GLEASON
vs.
E. L. WHITE. } Ejectment.

This cause having been submitted to the court without a jury, and the court having made its finding thereon, and plaintiff's motion for a new trial having been denied: It is therefore ordered and adjudged that the plaintiff has the fee simple title and right of possession in and to all the lands hereinafter described, and that the plaintiff do have and recover of and from the defendant, all that certain tract of land lying and being in the county of Dade
16 and State of Florida, described as follows, to-wit: All of lot one of section nineteen, township fifty-three, south, range

forty-two east, according to the U. S. survey made in 1874, excepting the five acre tract and the twenty-five acre tract which the defendant contracted to sell to Voorhees, containing thirty-five 80/100 acres, more or less; and that a writ of possession do issue therefor; and that the plaintiff do have and recover of and from the said defendant one cent for his mesne profits, together with his costs in this behalf expended herein taxed at $8.63.

Done and ordered in open court at Miami, Florida, this 12th day of December, A. D. 1901.

MINOR S. JONES,
Judge 7th Circuit of Florida.

On the 1st day of February, 1902, after the adjournment of said term by virtue of a special order to that effect, the plaintiff made up and tendered his bill of exceptions, which after due notice was settled and signed by the judge, which said bill of exceptions is in the words and figures following, to-wit:

In Circuit Court of Dade County, Florida.

I, Minor S. Jones, judge of the circuit court of the seventh judicial circuit of the State of Florida, do hereby certify that during the progress of the cause pending in said court, wherein W. H. H. Gleason was plaintiff and E. L. White was defendant, the following proceedings were had, *viz:* The cause having been submitted to the court without a jury and the court having made its findings and verdict against the plaintiff, the plaintiff on the 4th day of December, 1901, at the term of the court aforesaid, made and submitted the following motion for a new trial:

17 In Circuit Court, Dade County.

W. H. H. GLEASON
vs.
E. L. WHITE.

Now comes the plaintiff by his attorneys and excepts to so much of the court's findings as holds that the defendant is not guilty as to the part of lot 5, sec. 19, described in plaintiff's declaration, being the fractional south half of the southeast quarter of said lot 5, and moves the court to set aside the said finding and award a new trial on the following grounds, to-wit:

(1.) The finding is contrary to law.

(2.) The finding is contrary to the evidence applicable to the issues made by the pleadings.

(3.) The declaration avers that the land found for the defendant is a part of lot 1 sec. 19, T. 53 S. R. 42 E., according to the U. S. survey

of 1845, and that defendants *are* in possession thereof, and these allegations are admitted by the plea of not guilty, and the evidence shows title in the plaintiff and right of possession of all of lot 1 sec. 19, as per the U. S. survey of 1845.

ROBBINS & GRAHAM,
Att'ys for Pl'ff.

Motion denied and pl'ff excepts, Dec. 4th, 1901.

MINOR S. JONES, *Judge.*

And the same day the said motion coming on to be heard, the court denied the same, to which ruling the plaintiff excepted.

18 And on the same day the court granted the plaintiff sixty days to make up and settle a bill of exceptions, which order is in words and figures as follows:—

In Circuit Court, Dade County.

W. H. H. GLEASON
vs.
E. L. WHITE. } Ejectment.

Plaintiff is granted sixty days for the entry of the judgment in the above cause to make up and settle a bill of exceptions.

Done and ordered at Miami, Fla., this 4th day of December, A. D. 1901.

MINOR S. JONES, *Judge.*

The assignment of error presented to the judge at the time of the applying for the settlement of the bill of exceptions is as follows:

The court erred in denying plaintiff's motion to grant a new trial on the ground that the findings and verdict were contrary to the evidence.

GEO. M. ROBBINS,
Att'y for Plaintiff.

And inasmuch as the said several matters objected to or insisted upon and considered by the court do not appear by the record, the said plaintiff did on the 1st day of February, A. D. 1902, within sixty days from the entry of the final judgment by virtue of the special order herein made, propose this his bill of exceptions to the said ruling of said judge and request him to sign the same,

19 which after due notice to the opposite party or his attorney, is done, this 1st day of February, A. D. 1902.

MINOR S. JONES,
Judge of the Circuit Court of the Seventh Judicial Circuit of Florida.

In Circuit Court, Dade County, Florida.

Evidentiary bill of exceptions containing the evidence adduced on the trial of the cause wherein William H. H. Gleason was plaintiff and E. L. White was defendant, made up and settled at the instance of the plaintiff in error in support of the assignment of error predicated on the refusal of the court to grant a new trial on the ground that the verdict was contrary to the evidence, or not supported thereby.

The cause was tried under the following stipulation, to-wit:

In the Circuit Court of the Seventh Judicial Circuit of Florida in and for Dade County.

W. H. H. GLEASON
vs.
E. L. WHITE. } Ejectment.

It is stipulated and agreed between the parties in the above suit, acting through their counsel, that the above cases be tried before the court without a jury at the adjourned term of the circuit court of Brevard county, at Titusville, Florida, to be held the latter part of December or in the month of January next. The court can make its finding of the law and fact. And it is further stipulated that the court shall have a view of the premises, and that the evidence of witnesses may be taken by each side before a notary public upon notice to the adverse party without the formality of issuing commissions. It is further stipulated that the court may consider the testimony taken without duplicating it for each case, and shall mark upon the deposition on the title of each case to which he holds it applicable, and it shall form a part of the record of such case. Each party may object to admissibility of the testimony in each suit, taking the ruling of the court thereon subject to exceptions, as if the cases were tried before a jury.

H. F. ATKINSON.
GEO. A. WORLEY.
GEO. M. ROBBINS.
P. W. WHITE.

The cause came on to be tried by the court in Titusville, Florida, in vacation under stipulation without a jury on January 5th, 1901. An agreed statement of facts not meant to exclude evidence of other facts was submitted to the court and filed, and is as follows:

In Circuit Court of Dade County, Florida.

W. H. H. GLEASON
vs.
E. L. WHITE.

Agreed Statement of Facts (Not Meant to Exclude Evidence of Other Facts).

E. L. White received a deed from the trustees of the internal improvement fund for lot 5 sec. 19 T. 53 S. R. 42 E. on Aug. 20th, 1885. Between the date of this deed and the time he recorded said deed he entered into possession of the lot and lived thereon for the
21 succeeding two years. And then abandoned his improvements which burned down, and moved unto his homestead, about one quarter of a mile west.

That said defendant on Nov. 17th, 1888, conveyed 5 acres out of lot 5 to Christiana Elizabeth Gwyn, by deed recorded Dec. 10th, 1888, in Book "C," page 342, and 5 acres to Mary J. Pierce by deed dated Dec. 21st, 1888, and recorded Apr. 25th, 1890, in Book D, page 145; and five acres to Geo. Olsen by deed dated Apr. 8th, 1889, and recorded Apr. 25th, 1889, in Book C at page 431; and five acres to Eugene C. Harrington by deed dated April 19th, 1890, and recorded July 3rd, 1890, in Book D, page 205; and on May 9th, 1891, Harrington reconveyed to E. L. White (the defendant) the north half of said five acres. On Aug. 3rd, 1891, E. L. White and wife conveyed ten acres to Flors McFarlane who on Aug. 12th, 1891, conveyed it to Susie G. White, wife of the defendant.

On Apr. 22nd, 1892, E. L. White and wife conveyed one acre to Mary J. Pierce by deed recorded May 23rd, 1892, in Book F, page 49; on May 26th, 1892, Susie G. White and E. L. White, her husband, conveyed the southwest five acres, being five chains north and south and ten chains east and west, to Mrs. Rebecca Pinder; on Apr. 26th, 1892, E. L. White and wife conveyed to Lawrence E. Lowe five acres in northeast corner of lot 5; on June 24th, 1892, E. L. White and wife conveyed to Dennis O'Neill four acres:—This leaves in the name of defendant White the piece in the southeast corner of lot 5 shown on the accompanying tracing, which as to the location of the tracts is made a part of this statement.

The house of E. L. White which was burned, was on the Rebecca Pinder five acres. None of the grantees of White moved
22 on their lots or made improvements thereon, except that W. B. Voorhees has made improvements on the lot bearing his name on the attached tracing, within the last two years. This is still in White's name and was contracted to Voorhees in 1897 or 1898. On Aug. 13th, 1892, complainant brought his bill (being the plaintiff in these present issues) in equity in the circuit court of

Dade county, Florida, to set aside the deed from the State to E. L. White, and the White deeds to the other grantees mentioned, and to be put into possession. An order was made in said suit in favor of complainant, from which the defendants appealed to the supreme court, which reversed the circuit court and dismissed the bill for want of equity. The opinion in the 23rd So. Rep., page 539, of which a copy is attached, is made a part of this statement of facts. The mandate from the supreme court is also attached and forms a part of this statement.

The present suits were brought within a year from the filing of the mandate. After abandoning said land defendant E. L. White from time to time, got fire wood and dug comptie or koontie roots which were growing wild on lands in lot five which he had not sold.

In Nov., 1890, W. H. H. Gleason, the plaintiff, had a survey made of the south and west line of lot 5, and went over the lot thoroughly, and at that time it was apparently in a state of nature with no improvements upon it. About two years ago defendant E. L. White cut a ditch on the tract contracted to be sold to Voorhees.

Possession of said land was never demanded of defendant by W. H. H. Gleason or by any one in his behalf prior to the filing of the bill in equity to recover possession of lot 5 on Aug. 13th, 1892.

23 Field notes and copies of records in the surveyor general's office and United States land office under the signature of the surveyor general or certificate of the land office may be admitted in evidence subject to objection for irrelevancy, etc., not going to the authenticity of the document. Relevant letters purporting to be signed by the Commissioner or acting Commissioner of the General Land Office may be admitted without proof of authenticity, so far as they relate to matters or record in that office.

The certified copies of the official plats of the township containing sec. 19 in which the land in dispute is situated, and of the field notes of the two surveys will be admitted in evidence.

Plaintiff objects to testimony to prove that the bay line of Biscayne bay on sec. 19 was substantially different in 1845 from what it appears by the official plat of the survey of 1845. If this objection is overruled then the plaintiff admits that on Sept. 28th, 1850, the shore line was substantially as it appears on the official plat of the survey of 1874–5, but there was a severe gale in 1847.

Plaintiff objects to evidence to prove that lot one of sec. 19 as per survey of 1864–5 was swamp and overflowed land on Sep. 28th, 1850, on the ground that this land is embraced in the patent of William H. Gleason for lots one and two of sec. 19–53–42 as per the survey of 1845, and the granting of that patent was an adjudication of the non-swamp character of the greater part of the land embraced in each designated lot. If this objection is overruled, plaintiff reserves an exception and admits that the greater

24 part of lot one of sec. 19 as per survey of of 1874–5 was swamp and overflowed land within the meaning of the act

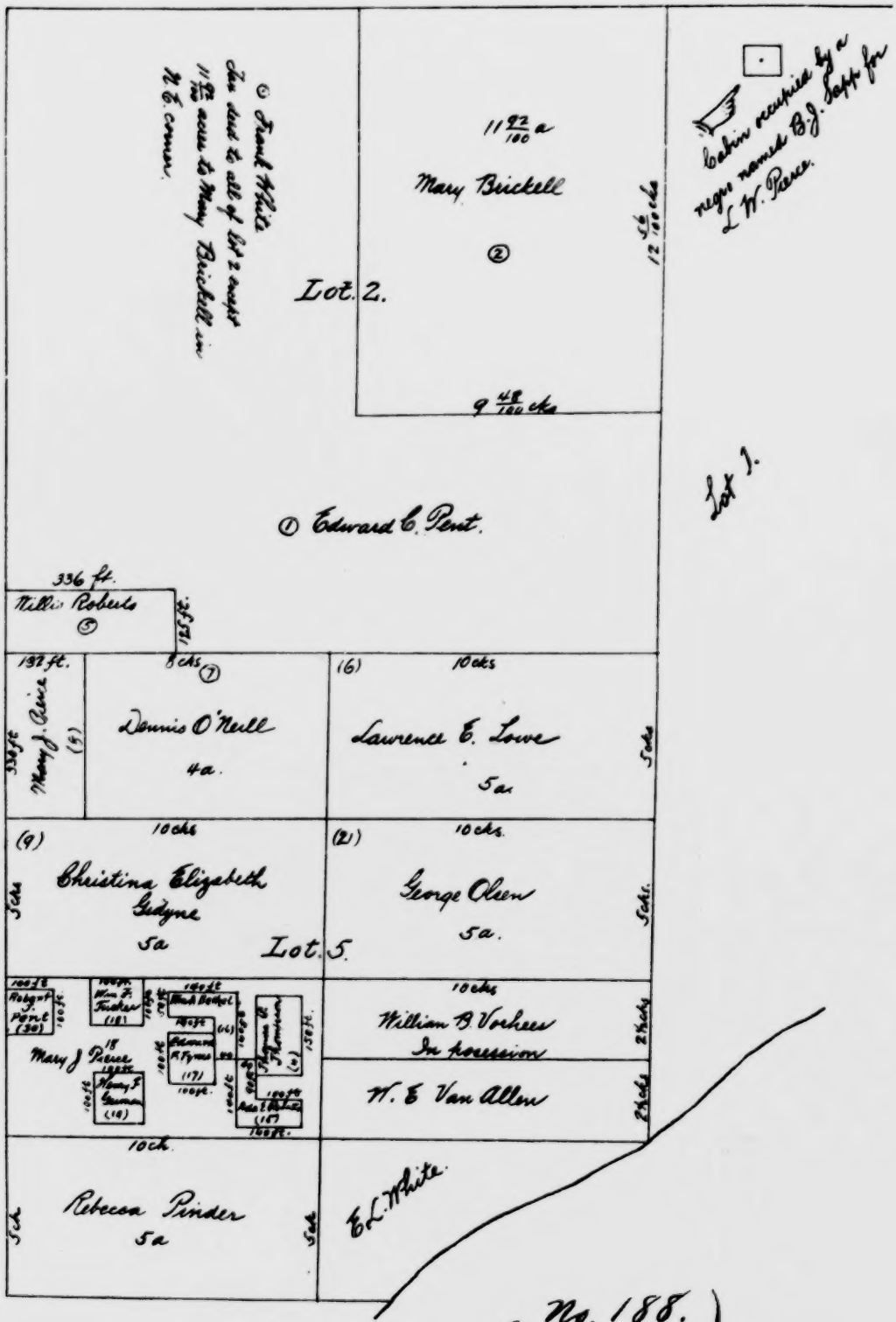
of Sept. 28th, 1850, as fully as if evidence had been introduced to prove the same.

Defendants object to evidence that the greater part of lot five sec. 19–53–42 was not swamp and overflowed land on Sept. 28th, 1850, on the ground that the patenting of that lot by the U. S. to the State of Florida was an adjudication of its swamp character within the meaning of the act of Sept. 28th, 1850. If this objection is overruled defendants reserve an exception and admit that the greater part of said lot was high and fit for cultivation and not swamp and overflowed land within the meaning of the act of Sept. 28th, 1850, at the time of the passage of said act, as fully as if this was proved by evidence.

The object of this statement is to save expense in the attendance of witnesses, etc., and it is not intended that if evidence of any fact is offered at the trial and objected to and the objection sustained, that if the same fact is stated in this instrument that its admissibility is waived on either side.

GEO. M. ROBBINS,
Att'y for Plaintiff.
P. W. WHITE,
H. F. ATKINSON,
Att'ys for Defendant.

(Here follows diagram marked page 25.)



No. 188.
Gleason
v.
White
} p. 25.

26 In the Supreme Court of Florida, June Term, A. D. 1897.

TRUSTEE OF THE INTERNAL IMPROVEMENT FUND OF Florida, Edward L. White, Susan G. White, Edward G. Pent, *et al.*, Appellants,
vs.
WILLIAM H. H. GLEASON, Appellee.
} Dade County.

TAYLOR, *C. J.*:

In August, 1892, the appellee filed his bill in equity in the circuit court of Dade county against the appellants under the provision of section 1500 of the Revised Statutes, the same being section 1 of chapter 3884 laws, approved June 4th, 1889, alleging therein that he was the owner of all the lands lying above the waters of Biscayne bay in section 19, township 53 S. R. 42 E. in Dade county, Florida, and that he acquired same by a deed of conveyance in fee from his father, W. H. Gleason, who acquired said land by patent from the United States. The bill alleges that portions of said section 19 have been patented to the State of Florida by the United States since the patent thereof to W. H. Gleason, but was so patented by mistake. That the State of Florida has sold and conveyed to several of the defendants various portions of the part patented to her, and that these grantees in turn have con-
27 veyed portions of their purchase from the State to still others of the defendants. The bill alleges the defendants or some of them to be in possession, and prays that the patent to the State of Florida for any portion of said section may be cancelled, and that all subsequent conveyances by the State of Florida and her grantees to any part thereof may be concelled, and the complainant adjudged to be the rightful owner of the whole of said section, and that he be put into possession thereof.

The Board of Trustees of the Internal Improvement Fund, and several others of the defendants, answered the bill, reserving therein, as a ground of demurrer to the whole bill the question of its want of equity. The complainant filed divers exceptions on the ground of impertinence to various parts of the several answers of the defendants, and brought said exceptions on for hearing, and the court below made orders sustaining the several exceptions to all of said answers, and from these orders the defendants have taken this appeal.

The bill is filed, expressedly, under the provisions of section one of chapter 3884, Laws of 1899, brought forward into the Revised Statutes as section 1500 thereof. It alleges that the defendants are in possession of the disputed lands, sets up an alleged paramount title thereto in the complainant, and prays an adjudication of such title, and that defendants be evicted thereof and the complainant put into possession. In other words, the bill is simply an ejectment bill, pre-

senting no other feature or claim for the interposition of a court of equity than the bare permit of this statute to carry such cases into equity. In the case of Hughes *et al. v.* Hannah *et al.* (decided at our last term) 39 Fla. —, 22 South. Rep. 613, it was held, in effect,
28 that while this statute should be enforced so far as it can be done consistently with the limitations of our constitution, that yet it was unconstitutional and without force or effect in so far as it undertook or had the effect of converting the remedy at law by ejectment into an action cognizable in equity. That where the remedy at law by ejectment was clear and adequate, that then this statute could not, constitutionally, put such a cause into equity, and thereby deprive the defendant of his common law right guaranteed by the constitution of a trial by jury. The bill in this case falls squarely within this decision, and no case is made thereby over which a court of equity has jurisdiction. Having arrived at this conclusion, it becomes unnecessary to enquire into the question presented by the exceptions filed to the answers of the defendants; but according to the *practice* of this and the courts of England and the United States, it is proper for us to order a dismissal of this bill for want of equity, even though its equity had not been questioned by the pleadings or presented here. Freeman *v.* Timanus, 12 Fla. 593. Foley *v.* Hill, 1 Phil. (19 Eng. Chy.) 399 affirmed in 2 H. L. Chase, 28; Fowler *v.* Lawrason, 5 Pet. 495; Hipp *v.* Babin, 19 How. 271; Strother *v.* Lovejoy, 8 B. Mon. 135.

Without passing upon the propriety or the impropriety of the rulings upon the exceptions to the answer, the cause is remanded with directions that the complainant's bill be dismissed, and that the appellee pay the costs of the cause and of this appeal.

I, B. B. Wilson, clerk of the supreme court of the State of Florida, do hereby certify that the foregoing three (3) pages of typewritten matter constitute a true copy of the opinion of the said
29 supreme court of Florida in the case of Trustees of the Internal Improvement Fund of the State of Florida, appellants, *vs.* William H. H. Gleason, appellee, which was filed in my office on the 30th day of November, A. D. 1891.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at Tallahassee, this 8th day of December, A. D. 1897.

[SEAL.] B. B. WILSON,
Clerk Supreme Court, State of Florida.

Mandate from Supreme Court.

The State of Florida to the honorable the judge of the circuit court for the seventh judicial circuit of Florida, Greeting:

Whereas, lately in the circuit court of the seventh judicial circuit of Florida in and for the county of Dade, in a cause wherein William

H. H. Gleason was complainant, and Henry L. Mitchell, governor, William G. Bloxham, comptroller, C. B. Collins, treasurer, W. B. Lamar, attorney-general, and L. B. Wombwell, commissioner of agriculture, as trustees of the internal improvement fund of the State of Florida, Edward L. White and Susie G. White, his wife, Edward G. Pent, and Martha Ann Pent, his wife, and others were defendants, the decree of said circuit court was rendered August 25, 1893, as by the inspection of the transcript of the record of the said circuit court, which was brought into the supreme court of the State of Florida, by virtue of an appeal agreeably to the laws of said State in such case made an- provided, fully and at large appears; and whereas at
30 the June term of said supreme court, holden at Tallahassee, A. D. 1897, the said cause came on to be heard before the said supreme court on the said transcript of the record, and was argued by counsel; in consideration whereof on the 30th day of November, A. D. 1897, it was considered by said supreme court that the said decree of the circuit court be and is hereby reversed, and the cause is remanded to the court below with directions that the bill of complaint be dismissed; it is further ordered that the appellee do pay the costs of the cause in the court below; and it is further ordered that the appellants do recover of the appellee their costs by them in this behalf expended in this court, which costs amount to the sum of twelve dollars; therefore,

You are hereby commanded, that such further proceedings be had in said cause as according to right, justice, the judgment of said supreme court and the laws of the State of Florida, ought to be had, the said decree of the circuit court notwithstanding.

Witness the Honorable R. F. Taylor, chief-justice of said supreme court, at Tallahassee, this 16th day of March, 1898.

[SEAL.] B. B. WILSON,
Clerk Supreme Court of Florida.

W. H. H. GLEASON, the plaintiff, was duly sworn and testified as follows: I have made diligent search for the deeds from William H. Gleason to myself, one dated June 2nd, 1884, and recorded June 18th, 1885, in Book "B" of Deeds, page 86, and the other dated the 15th day of June, 1890, and recorded August 11th, 1890, in Book D of Deeds, page 256, records of Dade county, and these deeds I find are lost. They are not in my power, custody or control. Plaintiff further testified: My father William H. Gleason is suffering from
31 paralysis and can not attend to business, I have charge of all his papers. I have made a careful search for the original of the U. S. patent to him for lots 1 and 2, sec. 19 T. 53 S. R. 42 E., and can not find it. My father lost a satchel at Live Oak some years ago containing many deeds, &c., and this may have been lost then. It can not be found and is not in my custody, possession or control. Plaintiff then offered in evidence a certified copy of the above patent and of the above deeds which are in words and figures as follows:

(4–205.)

DEPARTMENT OF THE INTERIOR,
J. S. M. B. GENERAL LAND OFFICE,
WASHINGTON, D. C., *Mar. 29th*, 1899.

I, Binger Hermann, Commissioner of the General Land Office, do hereby certify that the annexed copy of patent in favor of William H. Gleason, founded on Gainesville, Florida, homestead certificate No. 1162, application 4594, is a true and literal exemplification from the record in this office.

In testimony whereof, I have hereunto subscribed my name, and caused the seal of this office to be affixed at the city of Washington, on the day and year above written.

BINGER HERMANN,
[SEAL.] *Commissioner of General Land Office.*

(4–404.)

THE UNITED STATES OF AMERICA:

Homestead Certificate No. 1162, *Application* 4594.

To all to whom these presents shall come, Greeting:

Whereas, there has been deposited in the General Land Office of the United States a certificate of the register of the land
32 office at Gainesville, Florida, whereby it appears that, pursuant to the act of Congress, approved 30th May, 1862, "to secure homesteads to actual settlers on the public domain," and the acts supplemental thereto, the claim of William H. Gleason has been established and duly consummated, in conformity to law, for the lots numbered one and two of section nineteen in township fifty-three south of range forty-two in the district of lands subject to sale at Gainesville, Florida, containing one hundred and sixty-four acres and eighty-four hundredths of an acre, according to the official plat of the survey of the said land returned to the General Land Office by the surveyor general and approved July 10th, 1845.

Now know ye, that there is therefore, granted by the United States unto the said William H. Gleason the tract of land above described to have and to hold the said tract of land with the appurtenances thereof, unto the said William H. Gleason and to his heirs and assigns forever.

In testimony whereof, I, Rutherford B. Hayes, President of the United States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the city of Washington, the twenty-fourth day of June, in the year of our Lord one thousand eight

hundred and seventy-eight, and of the Independence of the United States the one hundred and second.

By the President:

[L. L.]

R. B. HAYES,
By B. L. LANG, *Secretary.*
S. W. CLARK,
Recorder of the General Land Office.

Recorded Florida, vol. 69, page 44.

33 This deed of conveyance witnesseth that William H. Gleason of Brevard county and State of Florida and his wife in consideration of the sum of five hundred dollars which the said William H. Gleason hereby acknowledges he has received from his son William H. H. Gleason of Eau Gallie, Florida, have bargained and sold, and hereby give, grant, release, alien and confirm to the said William H. H. Gleason and assigns the following lands situate in the county of Dade and State of Florida, to-wit: All of the fractional section nineteen (19) in township fifty-three (53) south of range forty-two (42) east, less ten (10) acres heretofore conveyed to Michael Sears, being recorded in the county clerk's office of Dade county. Together with all easements, rights of way and appurtenances generally belonging to said land, and the said William H. Gleason covenants with the said William H. H. Gleason that he has lawful right to sell and convey the said premises as above he has done; that the said premises are free from any lien or encumbrance in law or in equity; that he will execute further writing which may reasonably be required of him to assure the title hereby aliened, and that he will warrant and defend the said title against the lawful claims, demands of all persons; and the said —— —— hereby consents with her husband to the alienation of said land and makes herself a party to this deed for the purpose of relinquishing her dower and right of dower.

Witness our hands and seals the 2nd day of June, A. D., 1884.

WILLIAM H. GLEASON. [SEAL.]
—— ——. [SEAL.]

Signed and sealed in our presence:

H. BISBEE.
ZEPP HARRISON.

34 STATE OF FLORIDA, }
County of Dade. }

Be it known, that before me, a notary public, personally appeared William H. Gleason and —— ——, his wife, who severally acknowledged the foregoing deed for the purpose therein expressed, and I further certify that the said —— —— at an examination, separate and apart from her said husband, did acknowledge that she executed

the foregoing deed of conveyance and joined in the same for the purpose of relinquishing her dower or right of dower in and to the premises described therein, and that said relinquishment was made freely and voluntarily, and without any fear, compulsion or constraint of, or from her said husband the said —— ——.

Witness my hand and seal this second day of June, A. D. 1884.

[N. P. SEAL.] ZEPP HARRISON,
Notary Public.

Filed for record June 18th, 1885.

STATE OF FLORIDA, }
County of Dade, } ss:

I hereby certify that the foregoing is a true copy of a deed recorded in Book "B" Deeds, page 86.

Witness my hand and official seal this 11th day of Dec., 1900.

A. F. QUINBY,
Clerk Circuit Court.
By H. J. ANTHONY, *Dept. Cl'k.*

35 This indenture made the 15th day of June, in the year of our Lord one thousand eight hundred and ninety, between William H. Gleason and Sarah G. Gleason, his wife, of the county of Eau Claire and State of Wisconsin, of the first part and William H. H. Gleason of Eau Gallie, Brevard county, State of Florida of the second part: Witnesseth, that the parties of the first part for and in consideration of the sum of one dollar, lawful money of the United States of America to them in hand paid by the said party of the second part at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained sold and conveyed and by these presents *does* grant, bargain, sell and convey unto the said party of the second part and to his heirs and assigns, forever, all that piece or parcel of land described as follows: All of the fractional section nineteen (19) in township fifty-three (53) south of range forty-two (42) east, less ten (10) acres heretofore conveyed to Michael Sears, said tract of land being situated in Dade county, State of Florida, contains three hundred and seventeen and five hundredths (317.05) acres according to the Government survey.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and also all the estate, right, title, interest and claim, and all riparian rights, property possession, claim and demand whatsoever, as well in law as in equity, of the said parties of the first part, of in and to the above described premises and every part and parcel thereof, with the appurtenance-: To have and to hold, all and singular the above mentioned and described
36 premises together with the appurtenances unto the said party of the second part, his heirs and assigns forever.

In witness whereof the said parties of the first part have hereunto set their hands and seals, the day and year first above written.

W. H. GLEASON. [SEAL.]
SARAH G. GLEASON. [SEAL.]

Signed, sealed and delivered in presence of:

GEO. G. GLEASON.
GUY I. METCALF.

STATE OF FLORIDA, } ss:
County of Brevard, }

I, Guy I. Metcalf, do hereby certify that Sarah G. Gleason, to me well known as the wife of William H. Gleason and as one of the persons described and who executed the foregoing deed of conveyance, did this day on a separate and private examination before —, taken and made separate and apart from her said husband, acknowledge and declare that she made herself *her* party to and executed the same for the purpose of relinquishing, releasing, renouncing, granting and conveying all her separate estate and title, all her right of dower and homestead in and to the lands in said conveyance described and granted, and that she executed the same freely and voluntarily and without any constraint, apprehension, fear or compulsion of or from her said husband.

Witness my hand and seal at Melbourne, Fla., this 17th day of June, one thousand eight hundred and ninety.

GUY I. METCALF,
Notary Public.

[L. S.]

37 STATE OF FLORIDA, } ss:
County of Brevard, }

On this day personally appeared before me William H. and Sarah G. Gleason, to me well known as the persons described in and who executed the foregoing deed of conveyance and acknowledged that they executed the same for the purpose therein expressed.

In witness whereof, I have hereunto affixed my hand and official seal this 17th day of June, A. D. one thousand eight hundred and ninety.

GUY I. METCALF,
Notary Public.

Recorded this 11th day of August, A. D. 1890.

A. F. QUINBY,
Clk Cl Ct.

STATE OF FLORIDA, }
County of Dade, } ss:

I hereby certify that the foregoing is a true copy of a deed as recorded in Book D, page 256.

Witness my hand and official seal this 11th day of Dec. 1900.

A. F. QUINBY,
Clerk Circuit Court,
By H. J. ANTHONY, *Dep. Clk.*

Plaintiff next offered in evidence a certified copy of the township plat of T. 53 S. R. 42 E., referred to in the U. S. patent to William H. Gleason, which is in words, lines and figures as follows:

(Here follows diagram marked page 38.)

No 188.
Gleason
v
White
} p. 38.

Land District, East
State of Florida

Fl. T. LIII S. R XLII E.

Rec'd with S.G. Letter of 18 May 1846

Table of Contents.					
No.	Area	No	Area	No	Area
1		13		25	
2		14		26	
3		15		27	
4		16		28	
5	347.25	17		29	
6	320.00	18	417.31	30	161.87
7	641.52	19	160.00	31	68.70
8	96.32	20		32	
9		21		33	
10		22		34	
11		23		35	
12		24		36	
	1735.07		577.15		230.07
Public Land in Town					2542.29
Private Claims					
37	James Hogan				13.29
Aggregate in Tp.					2645.58

Surveyed in the second quarter of the year 1845 by George Mackey, Deputy Surveyor
John E. Richards, Marcus Rose were chain carriers
Variation 6°45 E
Scale 40 chains to an inch
Examined, compared with field notes and approved by my predecessor
A true copy from the original on file in this office
Surveyor General's office St Augustine May 18th 1860.
The claim of James Hogan was resurveyed under the order of the undersigned & returned to this office in the 1st quarter of 1856

Thos. P. Buell
Surr General

Land Surveyed	By whom surveyed	Date of Contract	No. of Miles	Rate per mile	Amt of Pay	When Surveyed
Township lines Section lines Traverse V 157	George Mackey	15th January 1845	7.59.09 5.04.02 632.68	$ ct. $ ct.	$58.98 $20.22 $47.13	2nd quarter 1845

Department of the Interior General Land Office
Washington D.C. August 2nd 1892.

I, W. M. Stone acting Commissioner of the General Land Office do hereby certify that the above is a true and literal exemplification of the official plat of Township 53 South Range 42 East, Tallahassee Meridian, on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed at the City of Washington on the day and year above written.

W. M. Stone
Acting Commissioner of the General Land Office

Seal

39 Plaintiff next offered in evidence, under the terms of the stipulation, letter of W. A. Richards, Assistant Commissioner of the General Land Office, dated January 2nd, 1901, to Geo. M. Robbins, which is in words and figures as follows:

173729—1900. DEPARTMENT OF THE INTERIOR, E. M.
GENERAL LAND OFFICE,
WASHINGTON, D. C., *January* 2, 1901.

Address only the Commissioner of the General Land Office.

Mr. George M. Robbins, attorney at law, Titusville, Fla.

SIR: I am in receipt of your letter of Dec. 22, 1900, relating to sec. 19 T. 53 S. R. 42 E. You say you have been advised that the claim of the State, under the swamp grant, to lots 1 and 2 of said section was rejected on the ground that the entire section was embraced in the entry of W. H. Gleason, and you ask, if such is the fact, that you be furnished with a certified copy of the decision rejecting the claim.

In reply you are advised that under date of Nov. 16, 1886, the claim of the State, under the swamp grant, to the lots in question was held for rejection for the reason that by the original plat or survey of the township such lots were covered by the waters of Biscayne bay, and therefore they were not granted by the act of Sept. 28, 1850. No appeal was taken from said decision and the claim was finally rejected April 15, 1887. Certified copies of the two decisions (certified under one seal) will be sent you on receipt of $1.70, legal fees.

Very respectfully, W. A. RICHARDS,
Assistant Commissioner.

R. C. L.

40 Plaintiff then offered in evidence a certified copy of the official plat of T. 53 S. R. 42 E. showing both the survey of 1845 and that of 1874 and certified copy of field notes, said plat and field notes are in lines and figures following:

Copy of Field Notes of Section 19, *T.* 53 *S., R.* 42 *E.*

West boundary of the township as it coincides with west boundary of section 19 is first given as surveyed by George McKay in 1845 at a variation of 5 30 E.

The notes of the entire fractional section are next given as surveyed by M. A. Williams in 1874, at a variation of 5 E.

Notes of McKay's subdivision lines are not of record in this office.

Chains. West boundary south (McKay line) from N. W. corner which is a post from which pine N. 41 W. 1.50 pine N. 32 E. 1.10
" S. 57 E. .70 " S. 65 W. .17
40.00 Open pine & palmetto to rocky Set ½ mile post
Pine N. 77 W. .14 Pine N. 50 E. .28
40.00 Open pine and pelmetto rocks Set 4. m. post
Pine N. 40 E. 53 Pine S. 68 E. .65
" N. 62 W. 1.20 " S. 52 W. .71

Williams survey (resurvey).

West boundary north, from S. W. corner which is a post from which bearings
Pine 12 inches in dia. N. 22 E. 44
" 20 " " " S. 61 E. 46
" 8 " " " N. 79 W. 72
" 10 " " " S. 77 W. 80

41

40.50 Found ¼ sec. post lying down Set new one Bearings
Pine 15 inches in dia. N. 62 W. .32
" 14 " " " S. 80 E. 1.12
81.00 To corner sections 19, 18, 24, & 13 Set post Bearings
Pine 10 inches in dia. S. 63 E. 1.14
" 20 " " " N. 66 E. 1.25
" 15 " " " N. 34 W. .27
" 17 " " " S. 61 E. .21

2nd rate rocky pine land

East on line between sections 30 & 19.

22.25 To Biscayne bay Set post Bearings
Pine 7 inches in dia. S. 76 W. 54
Buttonwood 8 " " " N. 28½ E. 95

2d rate rocky pine land.

On east line between sections 18 & 19.

40 35 Found old ¼ sec. post Set a new post Bearings
Pine 16 inches in dia. S. 11 E. .41
" 14 " " " N. 50 E. 1.04
44.00 To savannah
56.00 Leave savannah to sawgrass
59.92 Set post on Biscayne bay Bearings
Buttonwood 7 inches in dia. S. 60 E. 17
Mangrove 4 " " " N. 40 E. 12

2d — rocky pine land & savannah & marsh.

FOLDOUT(S) IS/ARE TOO LARGE TO BE FILMED

Meander of Biscayne bay from post between sections 19 and 30, in section 19.

N. 11 E. 32.00 in sec. 19 27 ch. to Sears' house & field
N. 27½ E. 10.00 pass Sears' clearing
S. 85 E. 12.00
N. 60 E. 4.00
42 N. 45 E. 10.00
N. 35 E. 7.00
North 4.00
N. ½ W. 2304 to post between secs. 19 & 18

Office of U. S. surveyor general, Tallahassee, Florida.

I, R. L. Scarlett, U. S. surveyor general of Florida, do hereby certify that the foregoing is a true and correct copy if the field notes of the survey of section 19 township 53 south, range 42 east as found of record in this office.

Witness my hand and private seal (there being no official seal)

R. L. SCARLETT, [SEAL.]
U. S. Surveyor General.

Done at Tallahassee, Florida, this twenty-seventh day of January, A. D. 1900.

—— ——.

(10 cent revenue stamp.)

(Here follow diagrams marked pp. 43 & 44)

45 Plaintiff then rested and defendant offered and read in evidence the following:

(1.) Certificate of L. B. Wombwell dated April 30th, 1900.

(2.) Deed No. 13186 Internal Improvement Fund to Edward L. White.

(3.) Certificate of L. B. Wombwell dated Dec. 12th, 1900.

(4.) Deed No. 15574 Internal Improvement Fund to P. W. White.

(5.) Letter from Wm. Stone, Assistant Commissioner, General Land Office to A. F. Quinby, dated Sept. 9th, 1891.

(6.) Letter from Wm. Stone, acting Commissioner, &c., to E. L. White, dated November 7th, 1892.

(7.) Certified copy by R. L. Scarlett, U. S. surveyor general of letter of J. W. Gilbert, surveyor general to Hon. Willis Drummond Commissioner General Land Office, dated December 18 —3.

(8.) Excess receiver's receipt No. 15079.

(9.) Part of diagram of township lines E. Fla.

(10.) Certified copy of plat of tp. 53 S. R. 42 E. as per survey of 1845 and field notes.

The foregoing in the order above enumerated are respectively in lines, words and figures as follows:

TALLAHASSEE, FLORIDA, *April* 30, 1900.

I, Lucius B. Wombwell, commissioner of agriculture of the State of Florida, in whose custody as such commissioner of agriculture aforesaid are all the official maps of lands conveyed to the State of Florida, and all patents of lands conveyed to said State of Florida by the United States of America under the provisions of the act of Congress of September 28th, 1850 (known as the swamp land act) do hereby certify that from such maps and patents it appears that lot numbered five (5) of section nineteen (19) in township fifty-three (53)
46 south, of range forty-two (42) east, of the survey approved by the U. S. surveyor general for the State of Florida, February 1st. 1875, was patented to said State of Florida by said United States of America as swamp land May 4th, 1885, and is embraced in Tampa patent No. 35, which is on file in the State land office, and in my custody as aforesaid.

In testimony whereof I have hereunto set my hand and affixed the seal of the department of agriculture of the State of Florida, this the 30th day of April, A. D. 1900.

[SEAL.]

L. B. WOMBWELL,
Commissioner of Agriculture.

Internal Improvement Fund, State of Florida.

Deed No. 13186.

Know all men by these presents, that the undersigned, the Trustees of the Internal Improvement Fund of the State of Florida, under an act of the General Assembly of said State, entitled "An act to pro-

vide for and encourage a liberal system of internal improvements in this State," approved January 6, 1855, for and in consideration of the sum of one dollar per acre, to them in hand paid by Edward L. White of the county of Dade, State of Florida, have granted, bargained and sold, and do by these presents grant, bargain, sell and convey unto the said Edward L. White and his heirs and assigns, forever, the following described lands, to-wit: The lot numbered five of section nineteen in township fifty-three, south of range forty-two east, containing thirty-eight 68/100 acres and lying and being in the county of Dade, in said State of Florida: To have and to hold unto the said Edward L. White and his heirs and assigns forever.

In testimony whereof, the said trustees have hereunto subscribed their names and affixed their seals, and have caused the *the*
47 seal of "the Florida State and land office" to be hereunto affixed, at the capitol in the city of Tallahassee, on this the twentieth day of August, A. D. eighteen hundred and eighty-five.

E. A. PERRY, *Governor.* [SEAL.]
W. D. BARNEY, [SEAL.]
Comptroller.
E. S. CRILL, *Treasurer.* [SEAL.]
C. M. COOPER, [SEAL.]
Attorney-general.
C. L. MITCHELL, [SEAL.]
[SEAL.] *Commissioner of Lands and Immigration.*

STATE OF FLORIDA, } ss:
County of Dade, }

I, T. W. Faulkner, clerk of the circuit court and *ex-officio* recorder in and for the county and State aforesaid, do hereby certify that the within and foregoing deed of conveyance was filed for record in my office on the 9th day of November, A. D. 1885, and was by me duly recorded in Deed Book "B" on pages 121 and 122 public records of said county of Dade.

In testimony whereof I have hereunto set my hand and affixed the official seal of said court at office at Miami, this 9th day of Nov., A. D. 1885.

T. W. FAULKNER, *Clerk.* [SEAL.]

I, Lucius B. Wombwell, commissioner of agriculture of the State of Florida, in whose custody as such commissioner of agriculture are the records pertaining to the sepection of lands and *and*
48 patenting of same to the State under the act of Congress of Sept. 28th, 1850, do hereby certify that lot one of section nineteen in township fifty-three south of range forty-two east, was selected for the State as swamp land as inuring to said State of Florida under act of Congress of Sept. 28th, 1850, several years ago has never been patented to the State.

In testimony whereof, I have hereunto set my hand and seal of the department of agriculture of the State of Florida, this the 12th day of December, A. D. 1900.

[SEAL.] L. B. WOMBWELL,
Commissioner of Agriculture.

Form 101.

Internal Improvement Fund, State of Florida.

Deed No. 15574.

Know all men by these presents, that the undersigned, the Trustees of the Internal Improvement Fund of the State of Florida, under the provisions of section 429 of the Revised Statutes of the State of Florida, for and in consideration of the sum of one dollar per acre, to them in hand paid by S. W. White of the county of Gadsden, State of Florida, have granted, bargained and sold, and do by these presents, grant, bargain, sell and convey unto the said S. W. White and his heirs and assigns forever, the following described lands, to-wit: The lot numbered one of section nineteen in township fifty-three, south of range forty-two east, containing sixty-five 80/100 acres, and lying and being in the county of Dade, in said State of Florida, to have and to hold unto the said S. W. White and his heirs and assigns forever.

In testimony whereof, the said trustees have hereunto sub-
49 scribed their names and affixed their seals, and have caused the seal of "the department of agriculture of the State of Florida" to be hereunto affixed, at the capitol in the city of Tallahassee, on this the eleventh day of May, A. D. nineteen hundred.

W. D. BLOXHAM, *Governor.* [SEAL.]
WM. H. REYNOLDS, *Comptroller.* [L. S.]
J. W. WHITFIELD, *Treasurer.* [L. S.]
W. B. LAMAR, *Attorney-general.* [L. S.]
[SEAL.] L. B. WOMBWELL,
Commissioner of Agriculture. [L. S.]

STATE OF FLORIDA, }
Dade County. }

This instrument was filed for record this 22 day of Nov., A. D. 1900, and duly recorded in Book Y of Deeds, on page 420. Record verified.

A. F. QUNIBY, *Clerk.*

E. 60565–1891.

DEPARTMENT OF THE INTERIOR, J. G. J.
GENERAL LAND OFFICE. M. M. R.
WASHINGTON, D. C., *September* 9, 1891.

Address only the Commissioner of the General Land Office.

Mr. A. F. Quinby, Juno, Florida.

SIR: I am in receipt of your letter of the 31st ultimo enclosing postal note for $1.50, for which you desire a certified copy of field notes of the survey of section 19, township 53 south, range 42 east, Florida approved July 10, 1845. In you- letter of the 11th ultimo you ask for said copy, and were informed by letter "E" of
50 the 22nd ultimo that it could be furnished for the sum which you have now deposited. Upon a closer inspection however, it is found that the field notes of said section on file in this office are of the survey made in 1874, and that the field notes of the survey of the section made in 1845, are not of record in this office. I will also state that the field notes of the subdivisional survey of the *whole* township 53 south, range 42 east are not of record in this office, a copy of which you requested in your said letter of the 11th ultimo, in the event that the field notes of section 19 could not be furnished you. I therefore, return herewith the $1.50 and have to inform you that the copy desired will be furnished you upon application to the U. S. surveyor general of Florida, whose office is at Tallahassee, and in whose custody are the original field notes of the survey indicated.

Very *t*espectfully,

WM. STONE,
Assistant Commissioner.

EXHIBIT "C."

E. 124763–1892.

DEPARTMENT OF THE INTERIOR, W. O. C. J. G. J.
GENERAL LAND OFFICE, G. W. C.
WASHINGTON, D. C., *November* 7, 1892.

Address only the Commissioner of the General Land Office.

E. L. White, Esq., Quincy, Florida.

SIR: I am in receipt of your letter of the 27th ultimo, asking to be advised "whether the plat resurvey of tp. 53 S. R. 42 E. Florida, is now and has been since its filing recognized as the correct plat of survey of said township, and whether the plat of original sur-
51 vey of the same, made in 1845, is on file in your office, and has been recognized, since the resurvey, as correct." In reply I have to advise you that the plat of resurvey aforesaid is recognized by this office as the subsisting survey, and that the plat of the original survey is on file in this office. The relative authenticity of the plats would depend upon the character of the case in which it might be called in question, and therefore, this office declines to

answer categorically the questions propounded by you. When a proper case arises involving the questions asked in your letter, and is regularly brought before the office it will receive proper attention.

Very respectfully, WM. STONE,
Acting Commissioner.

Copy.

Hon. Willis Drummond, Commissioner Gen. Land Office, Washington, D. C.

SIR: I have the honor to forward herewith for your approval a copy of a contract with M. A. Williams, heretofore at various time in contract with this office, for the survey of the unsurveyed neck of land south of the everglades, the resurvey of T. 53 S. R. 42 E. and the survey of the islands in Charlotte harbor. The resurvey of T. 53 S. R. 42 E. is requested by Hon. Wm. H. Gleason, who states that the original survey is entirely, or almost entirely obliterated and it is impossible for the settlers there to enter their lands in consequence.

Very respectfully, your ob't serv.,
(Signed) J. W. GILBERT,
Surveyor General.

Office of U. S. surveyor general, Tallahassee, Florida.

52 I, R. L. Scarlett, U. S. surveyor general of Florida, do hereby certify that the foregoing is a true and correct copy of the letter press copy of the letter from the U. S. surveyor general of Florida to the Commissioner of the General Land Office as it appears in the letter book on file in this office.

Witness my hand and private seal (there being no official seal)
R. L. SCARLETT, [SEAL.]
U. S. Surveyor General.

(10 cent rev. stamp.)

Done at Tallahassee, Florida, this May 5, A. D. 1900.

(Revised Statutes of the United States, section 2357.)

Homestead act of May 20, 1862.

Excess Receiver's Receipt No. 15079.

RECEIVER'S OFFICE,
TALLAHASSEE, FLA., *April 4th*, 1870.

Received of Wm. H. Gleason the sum of six dollars five cents, being in full for four acres and eighty-four hundredths of lots 1 & 2 section No. 19 in township 53 S. of range No. 42 E. being excess in said tract over the area entered under the homestead act, per application and receipt No. 4594.

$6.05. C. MORGAN.

(Here follow diagrams marked pp. 53 & 54.)

Part of — Diagram of TP Lines E. Fla.
R. 41 E surveyed in 1st & 2nd qr of the year 1845 by Geo. McKay. D.S.

x T 53 R 41 Saw Mill going River banks of Limerock

* Key Biscayne reserved for Lt H. purposes See Com's Corner Sep 1845

U. S. Sur. Gen. Office
Tallahassee Fla. Nov. 26, 1892.

I hereby certify that this is a true copy of part of a diagram now on file in my office.

Jno. C. Slocum
U. S. Sur Gen of Fla.

No. 188.
Gleason
&
White
} p. 53.

T. LIII - S - R. XLII E. East Florida.

Rec'd with S.G. Letter of 14 Feby 1845

Table of Contents

Sec.	Area	Sec.	Area	Sec.	Area
1		13		25	
2		14		26	
3		15		27	
4		16		28	
5	347.24	17		29	
6	640.00	18	412.38	30	161.37
7	641.52	19	164.80	31	72.98
8	96.32	20		32	
9		21		33	
10		22		34	
11		23		35	
12		24		36	
	1725.07		577.15		234.35
Total --- 2536.57					

Surveyed in the 2nd quarter of the year 1845
By Geo. McKay Dy

John E. Richards
Antonio Pons } Chairmen

Examined, compared with the field notes and approved July 10th 1845

V G Conway

Surv. Genl.

Meridian Var. 6° 18' E

Scale 40 chs to an inch

Surveys paid for Aug 1st, 45 as per G.L. Office Report 149

Land Surveyed	By whom Surveyed	Date of Contract	No of Miles	Rate per Mile	Amount of Pay	When Surveyed
East Florida	George McKay	15th Jany 1845	11.58	$ 4.00	$ 46.32	2d qr. 1845

Surveyed as above stated, and Plat and Field Notes returned to this Office, on the 5th day of Dec. 1845.

S.L. Office Dec. 5, 1845.

No. 188
Gleason
v.
White } p. 54.

55

GENERAL LAND OFFICE,
WASHINGTON, D. C., *November* 3, 1892.

I, W. M. Stone, acting Commissioner of the General Land Office, do hereby certify that the annexed copy of the plat of the survey of fractional township 53 south, range 42 east, Florida, approved July 10, 1845, and the field notes of the survey of the exterior lines of said township, executed by George McKay, deputy surveyor, under his contract dated February 15, 1845, is a true and literal exemplification of the official plat and field notes of the survey of said township on file in this office.

In testimony whereof, I have subscribed my name and caused the seal of this office to be affixed at the city of Washington, on the day and year above written.

W. M. STONE,
[SEAL.] *Acting Commissioner of General Land Office.*

6 N. W. bound'y T. 52 S. R. 42 E. course south
3.00 X saw grass to pine & palmetto rocky
37.00 Set ½ mile post
Pine S. 36 W. 57
" N. 20 E. 60
40.00 Pine & palmetto rocks
Set 6 mile post
Pine N. 53 W. 20
" S. 63 E. 115
" N. 52 E. 165
" S. 30 W. 60
1 m. N. bound'y T. 53 S. R. 42 E. co. east
40.00 Open pine & palmetto
Set ½ mile post pine S. 85 E. 30
56 " north 20
20.00 X pine to dry saw grass pra-rie
20.00 Set 1st m. post in pra-rie
Pine S. 85 E. 800
" N. 86 E. 810
" N. 19 W. 1000
2 m. N. bound'y of T. 53 S. R. 42 E. co. east
8.00 X pra-rie to pine
26.50 X pine & high palmetto to saw grass & bay
5.50 Set ½ mile post. Bay N. 40 E. 15
" S. 10 E. 25
19.31 X bay, vine & mangrove thicket to water edge of Bay Biscayne.
20.69 In water of bay to 2d mile post set in 5 ft. water

April 13.

3 & 4 m. N. bound'y T. 53 S. R. 42 E. co. east
125.30 Angulated from last post X bay to 3 ft. water
34.70 Chained to 4 m. post in 2 ft. water.

April 14.

3.00 X water in bay to mangrove
2.00 X mangrove to palmetto sand ridges.
14.50 X sand ridges to high water
Large stick of squared timber sunk deep in sand marked with sec. township & range.

April 15.

1 m. W. bound'y T. 53 S. R. 42 E. co. south var. 6 15 E.
40.00 Open pine & palmette
Set ½ mile post
Pine S. 58 E. 20
N. 67 W. 55
40.00 Open pine & palmetto low wet to small hammock
57
Pine N. 5 W. 175
" N. 7 E. 180
" S. 3 E. 200
Bay S. 61 W. 170
4.00 X to small canal N. E. & S. W. race to compty mill 5 chains east belonging to a Mr. Wood
3.00 X to Little River rapids—said to be 8 feet in ½ mile Water 2½ ft. deep.
1.00 X river to hammock
9.50 X hammock to pra-rie.
22.50 Open pra-rie set ½ m. post N. 81 W. 35—S. 21 E. 15
Pine N. 78 W. 650
2 m. post " S. 62 W. 526
" N. 60 E. 543
" S. 36 E. 492
3 m. W. bound'y T. 53 S.—R. 42 E. co. south
6.50 X pra-rie to pine & palmetto rocky.
33.50 Set ½ m. post Pine west 23 N. 79 E. 143
40.00 Pine & palmetto Set 3 m. post
Pine N. 41 W. 150
N. 32 E. 110
S. 57 E. 70
S. 65 W. 17
4 m. W. bound'y T. 53 S.—R. 42 E. co. south
40.00 Open pine & palmetto rocky
Set ½ mile post. Pine N. 77 W. 14
" N. 50 E. 28
40.00 Open pine & palmetto rocks
Set 4 m. post.

58

Pine N. 40 E. 53
" S. 68 E. 65
" S. 52 W. 71
" N. 62 W. 120
40.00 Open pine & palmetto rocks
Set ½ mile post
Pine S. 39 E. 75
" S. 29 W. 33
40.00 Open pine & palmetto *cumpty*
Set 5 m. post Pine N. 54 W. 55
S. 39 E. 34
S. 34 W. 19
N. 45 W. 54
6 m. W. bound'y T. 53 S.—R. 43 E. co. south
40.00 Set ½ m. post pine & palmetto
Pine N. 71 E. 50
" S. 58 W. 72
22.00 X pine & palmetto to hammock
18.00 Set 6 m. post in hammock
Crab wood N. 16 E. 18
Pidgeon plum S. 35 E. 15
Gumbo limbo N. 71 W. 25
" S. 43 W. 60

April 18.

1 mile N. bound'y of T. 54 S. R. 42 E. c. east
5.36 X hammock to Bay Biscayne.
198.00 X bay to mangrove Water in channel 14 feet
4.00 Set ½ mile post in mangrove
Mangrove N. 28 E. 20
" S. 19 W. 35.

59

40.00 Set 3 mile post X mangrove in palmetto scrub
16.00 X scrub to ocean
Stake of squared timber set deep in sand & high water

I, George Mackay, deputy surveyor, do solemnly swear that in pursuance of a contract made the 15th day of February, 1845, with V. Y. Conway, surveyor general of the United States for the State of Florida & in strict conformity to the laws of the United States & instructions of said surveyor general I have regularly surveyed the exterior township lines therein mentioned in the State of Florida and I do further solemnly swear that the foregoing are the true & original field notes thereof executed as aforesaid & that those parts which are reported impracticable were rendered so from the causes therein stated.

GEORGE MACKAY, *D. S.*

Sworn to before me this 16th day of July, 1845.

JAMES M. GOULD,
Justice of the Peace.

SURVEYOR GENERAL'S OFFICE,
ST. AUGUSTINE, *May* 18, 1845.

I hereby certify (under my oath of office) that the foregoing book of field notes is a true transcript from & carefully compared with the original on file in this office.

J. I. PAPY,
Field Note Clerk.

Examined & approved, the original having been approved by my predecessor.

ROBERT BUTLER,
Sur. General.

I, Minor S. Jones, judge of the circuit court of the seventh judicial circuit of Florida, do hereby certify that the foregoing evidentiary bill of exceptions contains all the evidence adduced at the trial in the above stated cause.

60 Presented and settled Feb. 1, 1902.

MINOR S. JONES,
Judge of the Circuit Court of the 7th Judicial Circuit of Florida.

Upon the 19th day of May, 1902, the clerk filed a certificate in said cause, reciting the payment of all costs therein accrued up to the time of the application for the writ of error, which is in the words and figures following:

In Circuit Court, Dade County.

W. H. H. GLEASON, Plaintiff,
vs.
E. L. WHITE, Defendant. } Ejectment.

I, Eugene C. Dearborn, clerk of the circuit court aforesaid, do hereby certify that the costs taxed in this case have been duly paid by the plaintiff.

Witness my hand and the seal of the circuit court this 19 day of May, A. D. 1902.

E. C. DEARBORN,
Clerk Circuit Court, Dade County, Florida,
By R. B. McLINDON, *D. C.*

Upon the 19th day of May, 1902, the plaintiff in error filed his præcipe for writ of error, which is in the words and figures following:

Supreme Court of Florida.

In Clerk's Office of the Circuit Court for Dade County.

W. H. H. GLEASON, Plaintiff in Error,
vs.
E. L. WHITE, Defendant in Error.

61 To the clerk of the circuit court for Dade county:

You will please issue a writ of error in behalf of W. H. H. Gleason to the final judgment rendered on the 12th day of December, A. D. 1901, in a certain cause pending in your court, wherein the above named plaintiff in error was plaintiff and the defendant in error was defendant.

Make said writ returnable to 7th day of July, 1902, being a day of the June term of the said supreme court.

GEO. M. ROBBINS,
Attorney for Plaintiff in Error.

Upon the 19th day of May, 1902, writ of error issued and is in the words and figures following:

The State of Florida to the judge of the circuit court of the seventh judicial circuit of the State of Florida, Greeting:

Because in the record and proceedings, and also in the rendition of judgment in a cause that was prosecuted in the circuit court held for the county of Dade, and judgment rendered on the 12th day of December, A. D. 1901, and entered on the 12th day of December, A. D. 1901, between W. H. H. Gleason as plaintiff, and E. L. White as defendant, manifest error hath happened as it is said to the great damage of the said W. H. H. Gleason, as by his complaint appears.

We, willing that the error, if any hath been, should be duly amended, and full and speedy justice done therein to the said parties, do command you that, if the judgment be therein, you distinctly and openly send us the record and process of the suit aforesaid with all things touching them, under your seal, together with this writ, so that we may have them before our justices of our supreme court of the State of Florida to be held at Tallahassee, on the 7th
62 day of July being a day in the June term, A. D. 1902, that, inspecting the record and process aforesaid, we may, for correcting that error therein, further cause to be done what of right and according to law shall be *to be* done.

Witness the Hon. R. Fenwick Taylor, chief-justice of said supreme court, and the seal of the circuit court for Dade county, this 19 day of May, A. D. 1902.

[SEAL.]

E. C. DEARBORN,
Clerk Circuit Court for Dade County,
By R. B. McLINDON, *D. C.*

Upon the 19th day of May, 1902, writ of error was recorded in Circuit Court Minutes Record at page 32 Said writ of error as it appears of record is in the words and figures following:

The State of Florida to the judge of the circuit court for the seventh judicial circuit of the State of Florida, Greeting:

Because in the record and proceedings, and also in the rendition of judgment in a cause that was prosecuted in the circuit court held for the county of Dade, and judgment rendered on the 12th day of December, A. D. 1901, and entered on the 12th day of December, A. D. 1901, between W. H. H. Gleason as plaintiff, and E. L. White as defendant, manifest error hath happened, as it is said to the great damage of the said W. H. H. Gleason, as by his complaint appears.

We willing that the error, if any hath been, should be duly amended, and full and speedy justice done therein to the said parties, do command you that, if the judgment is therein rendered, you distinctly and openly send to us the record and process of the suit aforesaid with all things touching them, under your seal, to-
63 gether with this writ, so that we may have them before our justices of our supreme court of the State of Florida to be held at Tallahassee on the 7th day of July being a day in the June term, A. D. 1902, that, inspecting the record and process aforesaid, we may, for correcting that error therein, further cause to be done what of right and according to law shall be *to be* done.

Witness the Hon. R. Fenwick Taylor, chief-justice of the said supreme court, and the seal of the circuit court for Dade county this 19 day of May, A. D. 1902.

E. C. DEARBORN,
[SEAL.] *Clerk Circuit Court for Dade County,*
By R. B. McLINDON, *D. C.*

I, Eugene C. Dearborn, clerk of the circuit court of Dade county, do hereby certify that the foregoing is a true copy of the record of the writ of error in this cause.

EUGENE C. DEARBORN,
Clerk Circuit Court, Dade County, Florida.

On the 19th day of May, 1902, the plaintiff in error filed his complete assignment of errors, which are in the words and figures following, to-wit:

In Supreme Court, State of Florida, June Term, 1902.

In Office of the Clerk of the Circuit Court for Dade County.

W. H. H. GLEASON, Plaintiff in Error,
vs.
E. L. WHITE, Defendant in Error.

64 Now comes W. H. H. Gleason, plaintiff in error, by his attorney George M. Robbins, and says that there is manifest error in the record, proceedings and judgment in a certain cause in the circuit court for Dade county, wherein plaintiff in error was plaintiff and the defendant in error was the defendant, and plaintiff assigns the following errors:

(1.) The finding is contrary to law.

(2.) The finding is contrary to the evidence pertinent to the issues made by the pleadings.

(3.) The declaration avers that the land found for the defendant is a part of lot 1 sec. 19 T. 53 S. R. 42 E. according to the U. S. survey of 1845 and that defendants are in possession thereof, and these allegations are admitted by the plea of not guilty, and the evidence shows title in the plaintiff and right of possession of all of lot 1 sec. 19 as per the U. S. survey of 1845.

(4.) The court erred in denying plaintiff's motion to grant a new trial on the ground that the findings and verdict were contrary to the evidence.

(5.) The court erred in holding that the patent conveying to William H. Gleason lots 1 and 2 of sec. 19 T. 53 S. R. 42 E. as per the U. S. survey of 1845 did not embrace all of the land in said sec. 19 between the west boundary of said section and the waters of Biscayne bay.

GEO. M. ROBBINS,
Attorney for Plaintiff in Error.

Copy received May 19, 1902

H. F. ATKINSON,
Att'y for Def't in Error.

65 On the 19th day of May, 1902, the plaintiff in error filed his instructions to the clerk for making transcript of record, which said instructions are in words and figures following:—

In Circuit Court of the Seventh Judicial Circuit of Florida in and for the County of Dade.

W. H. H. GLEASON, Plaintiff in Error,
vs.
E. L. WHITE, Defendant in Error.

} Application to Clerk for Transcript of Record and Directions for Making up the Same.

To the clerk of the circuit court for Dade county:

Now comes the plaintiff in error (plaintiff in the circuit court) and applies for a transcript of the record in the above entitled cause.

The clerk will commence to make up said transcript on the 4th day of June, A. D. 1902, a day fifteen days and more after the filing of these instructions, and in making said transcript the clerk will observe the following directions, to wit:

1st. Recite fact and date of filing of præcipe for summons.
2nd. Recite fact and date of issuance and service of summons.
3rd. Copy præcipe for alias summons.
4th. Copy alias summons.
5th. Recite fact and date of entry of appearance.
6th. Copy original declaration.
7th. Copy plea.
8th. Copy notice of motion to withdraw replication and file amended declaration.
9th. Copy motion to withdraw replication and file amended declaration.
66 10th. Copy notice of withdrawal of replication and filing of amended declaration.
11th. Copy amended declaration.
12th. Copy findings and verdict.
13th. Copy motion for new trial.
14th. Copy order as to bill of exceptions.
15th. Copy judgment.
16th. Copy bill of exceptions.
17th. Copy evidentiary bill of exceptions.
17*a*. Copy certificate of payment of costs.
18th. Copy præcipe for writ of error.
19th. Copy writ of error.
20th. Copy writ of error as it appears in court minutes.
21st. Copy complete assignment of errors filed with this application.
22nd. Copy this application for the record and also any directions filed by the defendant.

GEO. M. ROBBINS,
Att'y for Pl'ff in Error.

Copy received May 19th, 1902.
H. F. ATKINSON,
Att'y for Def't in Error.

I, Eugene C. Dearborn, clerk of the circuit court in and for the county of Dade, State of Florida, do hereby certify that the foregoing pages numbered from 1 to 32 inclusive contain a correct transcript of the record of the judgment in the case of W. H. H. Gleason, plaintiff against E. L. White, defendant, and a true copy and correct recital and a copy of all such papers and proceedings in said cause as appears upon the records and files in my office, that have
67 been directed to be included in said transcript by the written demand of the said parties.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court this 6th day of June, A. D. 1902.

[SEAL.] EUGENE C. DEARBORN,
Clerk Circuit Court, Dade County.

And afterwards, to-wit: on the 7th day of July, 1902, came the plaintiff in error in said cause, by his counsel, and submitted the cause to the said supreme court upon the said transcript of the record and written briefs.

And at a subsequent day, to-wit: on the 19th day of December, 1903, judgment was rendered by the said supreme court of the State of Florida, in the words and figures following, to-wit:

Supreme Court of Florida, June Term, A. D. 1903.

W. H. H. GLEASON, Plaintiff in Error, vs. E. L. WHITE, Defendant in Error.	Upon Writ of Error to a Judgment of the Circuit Court within and for the County of Dade.

This cause having been submitted to the court at a previous term thereof upon a transcript of the record of the judgment aforesaid and the argument of counsel for the plaintiff in error, and the record having been seen and inspected, and the court being now advised of its judgment to be given in the premises, it seems to the court that there is no error in the said judgment; it is therefore,
68 considered, ordered and adjudged by the court that the said judgment of the circuit court be and is hereby affirmed; and it is further ordered that the defendant in error do recover of the plaintiff in error his costs by him in this behalf expended, which costs are taxed at the sum of —; all of which is ordered to be certified to the court below.

The decision of the court in this cause was this day read, and ordered to be filed. * * *

R. F. TAYLOR,
Chief-Justice.

And afterwards, to-wit: on the 15th day of January, 1904, came the plaintiff in error, W. H. H. Gleason, by counsel, and filed in open court before the chief-justice his petition for the allowance of a writ of error to said judgment, returnable before the Supreme Court of the United States on the 13th day of February, 1904, which petition is in the words and figures as follows, to-wit:

Petition for Allowance of Writ of Error.

To the Honorable R. Fenwick Taylor, chief justice of the supreme court of Florida:

Your petitioner, William H. H. Gleason, by George M. Robbins, his attorney, respectfully represents unto your honor that on December 19th, 1903, the supreme court of the State of Florida (division B) affirmed the judgment of the circuit court for Dade county in a cause wherein petitioner was plaintiff in the lower court and plaintiff in error in the supreme court and Edward L. White was defendant.

69 That said cause was decided without written opinion, but that its decision involved the construction of the statute of the United States governing the survey of the public lands, and the homestead laws of the United States and there was drawn in question the right of petitioner to the possession of land claimed by him to be included within the lines and natural objects fixing the boundaries of lots 1 and 2 of sec. 19 T. 53 S., R. 42 E. Florida, patented by the United States to petitioner's predecessor in the title Wm. H. Gleason in pursuance of the homestead entry of the said Wm. H. Gleason. Petitioner based his claim to the possession of the land in question upon said homestead entry, patent from the United States and the laws thereof governing the survey of the public lands, all of which will more in detail appear from the assignment of errors filed with this petition, and the decision of the circuit court for Dade county, Florida, was against the validity of petitioner's title asserted under said statutes and patent, and the decision of the supreme court of Florida was also against the title of petitioner claimed as aforesaid; and for as much as these matters will appear from an inspection of the record of said cause on file in the supreme court here by reason of which an appellate jurisdiction to revise said decision exists in the Supreme Court of the United States, petitioner prays your honor, upon inspection of the record aforesaid, to allow a writ of error from the Supreme Court of the United States to the said judgment of the supreme court of Florida and to the judgment of the lower court thereby affirmed. And petitioner will ever pray, etc.

GEO. M. ROBBINS AND
J. B. WHITFIELD,
Attorneys for Petitioner.

70 Whereupon, on the same day the prayer of the petitioner was granted by an order in the words and figures as follows, to-wit:

STATE OF FLORIDA:

Whereas William H. H. Gleason has presented to me his petition praying that a writ of error be allowed from the Supreme Court of the United States to review a judgment of the supreme court of the State of Florida affirming a judgment of the circuit court for Duval county, Florida, in a cause wherein petitioner was plaintiff and plaintiff in error, and Edward L. White was defendant and defendant in error, and whereas, a petition has been filed here praying that a writ of error from the Supreme Court of the United States be allowed: It is ordered that a writ of error from the Supreme Court of the United States be allowed as prayed, and the bond, in the penal sum of five hundred dollars, presented with said petition is hereby approved.

In testimony whereof, witness my hand this 15th day of January, 1901.

R. F. TAYLOR,
Chief Justice of the Supreme Court of the State of Florida.

And thereafter, upon the same day, upon presentation to the chief-justice of said petition for the allowance of a writ of error, the same was allowed by the chief-justice as appears upon the original writ of error accompanying this return; and upon the same day a citation was allowed by the chief-justice as appears upon the original citation accompanying this return to the writ of error aforesaid.

71 And thereafter, to-wit: on the 1st day of February, A. D. 1901, and during the term of the said court the original supersedeas bond of the plaintiff in error in this writ of error, approved by the Honorable R. F. Taylor, chief-justice of the supreme court of the State of Florida, was filed in the words and figures as follows, to-wit:

Know all men by these presents that we, William H. H. Gleason, as principal and S. G. Gleason and Geo. G. Gleason as surety are held and firmly bound unto Edward L. White in the full and just sum of five hundred dollars, to be paid to the said Edward L. White, his executors, administrators or assigns: to which payment well and truly to be made we bind ourselves our heirs, successors, executors and administrators, jointly and severally, by these presents.

Signed and sealed, and dated this 14th day of January, 1901.

Whereas upon the 19th day of December, 1900, the supreme court of Florida affirmed a judgment of the circuit court for Duval county, Florida, wherein William H. H. Gleason was plaintiff and plaintiff

in error and the said Edward L. White was defendant and defendant in error, and the said William H. H. Gleason has applied for and obtained the allowance of a writ of error from the Supreme Court of the United States to review such judgment;

Now the condition of the above obligation is such that if the said William H. H. Gleason shall prosecute said writ of error to effect and answer all costs and damages if he fails to make good his plea, then the above obligation to be void; else to remain in full force and virtue.

WILLIAM H. H. GLEASON. [L. S.]
S. G. GLEASON. [L. S.]
GEO. G. GLEASON. [L. S.]

Sealed and delivered in presence of:
A. G. NELSON.
J. W. MILLER.

72 This bond approved.
R. F. TAYLOR,
Chief Justice of the Supreme Court of the State of Florida.

A good bond
A. A. STEWART,
Clerk Circuit Court,
By O. A. STEWART,
Deputy Clerk Ct. Ct.

A good bond as appears by the tax books
E. W. HALL,
Tax Collector.

STATE OF FLORIDA, }
County of St. Johns. }

Personally came before me George G. Gleason to me personally well known, and being duly sworn made oath that he is worth more than the sum of $500.00 over and above all just debts and exemptions allowed by law.

GEO. G. GLEASON.

Sworn to and subscribed to before me this 28th day of January, A. D. 1904.
[SEAL.]

GEO. W. GIBBS,
Notary Public.

STATE OF FLORIDA, }
County of Brevard. }

Personally came before me Sarah G. Gleason a widow to me personally well known, and being duly sworn made oath that she is

worth more than the sum of $500—over and above all just debts and exemptions allowed by law.

S. G. GLEASON.

73 Sworn and subscribed to before me this 29th day of January, A. D. 1904.

WM. R. ROESCH, [SEAL.]
Justice of the Peace, 5th Dist.

(Endorsed:) In Supreme Court of the United States. William H. H. Gleason, plaintiff in error, *vs.* Edward L. White, defendant in error. Supersedeas bond. Filed in the clerk's office February 1st, A. D. 1904. B. B. Wilson, clerk supreme court. Geo. M. Robbins, for pl'ff in error.

74 I, B. B. Wilson, clerk of the supreme court of the State of Florida, do hereby certify that the foregoing pages numbered from one (1) to seventy-three (73) inclusive constitute a true copy of all of the proceedings and a correct transcript of the record of the judgment in the case of William H. H. Gleason, plaintiff in error, *vs.* Edward L. White, defendant in error, as appears upon the files and records of my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said supreme court of Florida, at Tallahassee, the capital, this 3rd day of February, A. D. 1904.

[Seal Supreme Court of the State of Florida.]

B. B. WILSON,
Clerk Supreme Court State of Florida.

75 The foregoing transcript of the record of the proceedings of the supreme court of the State of Florida in the case of William H. H. Gleason, plaintiff in error, *vs.* Edward L. White, defendant in error, is transmitted to the Supreme Court of the United States in obedience to a writ of error issued herein, the original of which is hereto attached.

[Seal Supreme Court of the State of Florida.]

B. B. WILSON,
Clerk Supreme Court State of Florida.

76 *Writ of Error.*

THE UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the supreme court of the State of Florida, Greeting:

Because in the record and proceedings, and also in the rendition of the judgment, of a plea which is in the said supreme court of the State of Florida, before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between William H. H. Gleason and Edward L. White, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such, their validity; or wherein was drawn in question the construction of a clause of the Constitution, treaties, or laws of the United States or a commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute or commission, a manifest error hath happened, to the great damage of the said William H. H. Gleason, as by his complaint appears, we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things touching the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the 13th day of February A. D. 1904, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the 15th day of Jan. A. D. 1904.

[Seal U. S. Circuit Court, Northern Dist. of Florida.]

F. W. MARSH, *Clerk*,
Per J. J. HODGES, *Dep. Clerk*.

Allowed by
R. F. TAYLOR.
Chief Justice of the Supreme Court
of the State of Florida.

[Endorsed:] Supreme Court of the United States. William H. H Gleason, pl'ff in error, *vs.* Edward L. White, def. in error. Writ of error to the supreme court of the State of Florida. Filed Jan. 15 1904. B. B. Wilson, clerk supreme court.

77 *Citation.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States to Edward L. White, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the 13th day of Feb'y*y*, 1904 pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Florida wherein William H. H. Gleason is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 15th day of Jan'y, 1904.

R. F. TAYLOR,
Chief Justice of the Supreme Court of the State of Florida.

78 STATE OF FLORIDA, }
County of Dade, } *ss:*

On this 20th day of January 1904 personally appeared before me S. L. Patterson and having been duly sworn made oath that he delivered a true copy of the within citation to Edward L. White the defendant in error at Miami, Florida, the 18th day of January 1904.

S. L. PATTERSON.

Sworn to and subscribed before me the date first above written.

{ Seal of Fleda V. Blackman, Notary Public, State of Florida at Large. }

FLEDA V. BLACKMAN,
Notary Public in and for the County and State Aforesaid.

[Endorsed:] Supreme Court of the United States. William H. H. Gleason, plaintiff in error, *vs.* Edward L. White, def. in error. Citation. Filed Jan. 22 1904. B. B. Wilson, clerk supreme court. George M. Robbins, attorney for plaintiff in error.

79 In the Supreme Court of Florida, Division B, June Term, A. D. 1903.

W. H. H. GLEASON, Plaintiff in Error,
vs.
E. L. WHITE, Defendant in Error. } Dade County.

Per *Curiam:*

This cause came on for final hearing upon transcript of the record and brief for the plaintiff in error, and the court having duly considered same and being advised of its opinion that there is no error, it is, therefore, considered by the court that the judgment of the circuit court of Dade county from which this writ of error was taken, be and the same is affirmed at the cost of plaintiff in error.

I, B. B. Wilson clerk of the supreme court of the State of Florida, do hereby certify that the foregoing is a true copy of the decision of the supreme court of the State of Florida in the case of W. H. H. Gleason, plaintiff in error, *vs.* E. L. White, defendant in error, which was filed in my office on the 19th day of December, 1903.

Seal Supreme Court of the State of Florida.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said supreme court, at Tallahassee, the capital, this 3rd day of February, A. D. 1904.

B. B. WILSON,
Clerk Supreme Court, State of Florida.

80 In Supreme Court of the United States.

WILLIAM H. H. GLEASON, Plaintiff in Error,
v.
EDWARD L. WHITE, Defendant in Error. } Assignment of Errors.

Now comes the plaintiff in error, William H. H. Gleason, by George M. Robbins, his attorney, and says that there is manifest error in the record and proceedings in the above entitled cause and assigns for error the following grounds, to-wit:

I.

The court erred in holding that the land in question situated in lot 5 of sec. 19 T. 53 S. R. 42 E. as per survey of 1874 was not conveyed to Wm. H. Gleason, plaintiff's predecessor in the title, by the patent from the United States dated June 24th, 1878, which patent was made in accordance with Gleason's homestead entry, in conformity to the survey and official plat of July 10th, 1845; and in holding that title to said land in said lot 5 passed to the State of Florida by Tampa patent No. 35 dated May 4th, 1885, through which latter patent defendant claims.

II.

The court erred in holding that lots one and two of section 19 T. 53 S., R. 42 E. according to the official plat of July 10th, 1845 as patented to Wm. H. Gleason in 1878 did not have a water boundary for their entire length upon the east as shown by said plat, but that the same was bounded upon the east by other land, to-wit, lot 5 as per the survey of 1874, and that the patent to Gleason did not embrace this land.

III.

The court erred in holding that the patent to Wm. H. Gleason of all of fractional section 19 said township and range above, was not a decision of the land department that the greater part of each lot into which said section was divided by the plat under which the Gleason patent issued, was not swamp and overflowed land, so that no land in said section passed to the State under the swamp land act.

IV.

81 The court erred in holding that land which appeared to be covered by the waters of Biscayne bay by the official plat in effect Sept. 28th, 1850, the date of the swamp land grant could have been granted by that act, and in holding that title to the land in controversy in lot 5 as shown by survey of 1874, passed to the State by the act of 1850 and was State land at the time of the patent to Gleason, and that the subsequent patent to the State was but a recognition of a title existing in the State since 1850.

V.

The court erred in holding invalid the claim of the plaintiff under the statutes of the United States governing the surveys of the public lands, and the statutes relating to homestead entries and patents issued thereon, to the land in controversy in this suit situated in lot 5 as shown on the plat of 1874.

Wherefore the said plaintiff in error prays that the judgment of the supreme court of the State of Florida affirming the judgment of the circuit court of the seventh judicial circuit of the State of Florida for Dade county may be reversed and that the judgment of said circuit court may be also reversed, and that a new trial be ordered.

GEORGE M. ROBBINS,
Attorney for Plaintiff in Error.

82 [Endorsed:] In Supreme Court of the United States. William H. H. Gleason, plaintiff in error, *vs.* Edward L. White, defendant in error. Assignment of errors. Filed Jan. 15 1904 B. B. Wilson, clerk supreme court. Geo. M. Robbins, att'y for pl'ff in error.

Endorsed on cover: File No. 19,232. Florida supreme court. Term No. 188. William H. H. Gleason, plaintiff in error, *vs.* Edward L. White. Filed February 8th, 1904. File No. 19,232.

FILE COPY.

Office Supreme Court U. S.
FILED
OCT 22 1904
JAMES H. McKENNEY,
Clerk.

BRIEF OF PLAINTIFF IN ERROR.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

NO. 188.

WILLIAM H. H. GLEASON, PLAINTIFF IN ERROR,

Vs.

EDWARD L. WHITE, DEFENDANT IN ERROR.

IN ERROR TO THE SUPREME COURT OF THE STATE OF FLORIDA.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. 188.

WILLIAM H. H. GLEASON,
Plaintiff in Error,
Vs.
EDWARD L. WHITE,
Defendant in Error.

BRIEF OF PLAINTIFF IN ERROR.

Statement of the Case.

The case involves the true contents of the homestead of William H. Gleason, being Lots 1 and 2 of Section 19, Township 53 South, Range 42 East, on Biscayne Bay, Florida.

The township was surveyed by Geo. Mackey, Deputy Surveyor, and the plat of his survey was approved July 10, 1845. The plat shows Section 19 to be fractional, bounded on the north, west and south by the section lines and on the east by Biscayne Bay. It was divided into two lots by a line running from the half mile post on the west boundary east to the Bay. The north lot was numbered one, and the south two.

William H. Gleason entered, under the homestead law, Lots 1 and 2, Section 19, Township 53 South, Range 42 East, and after his claim had been duly established and consummated, a patent issued to him for these lots "according to the official plat of the survey of the said land returned to the General Land Office by the Surveyor General and approved July 10, 1845." According to the plat referred

to and made part of the patent, the land described embraced all of the land in the fractional section, and was bounded on the east by the waters of the Bay. William H. Gleason conveyed all of fractional Section 19 (except ten acres sold Sears) to William H. H. Gleason, the plaintiff in error here.

On February 1, 1875, another plat of this township, based on a survey made by M. A. Williams the previous year, was approved and made official.

According to this plat the distance from the northwest corner of Section 19 east to the Bay is greater than appears by the plat approved in 1845, under which the Gleason patent issued, and the fractional section is subdivided into six lots. Lot 6 corresponds to Lot 2, and Lots 1 to 5 inclusive to Lot 1 of the earlier map. (See plats in record.)

Lot 5, as per the plat of 1875, was patented by the United States to the State of Florida May 4, 1885. (The patent to Gleason covering all of fractional Section 19 bears date of 1878), and the State, by the trustees of the Internal Improvement Fund, made conveyance of this Lot 5 to Edward L. White, the defendant in error, August 20, 1885.

The State had also made selection of Lot 1 as per the later plat, but this was not patented to it by the Government.

White made entry on Lots 1 and 5 (as per plat of 1875), sold part and retained the rest, which Gleason brought ejectment to recover. The plaintiff claimed that the land was a part of Lot 1, as per plat of 1845, and was embraced in the patent to William H. Gleason. The trial was without a jury, and the court found for the plaintiff as to so much of the land as lay in Lot 1, as per plat of 1875, but found the defendant not guilty as to that part situated in Lot 5 (plat of 1875) and judgment followed. This judgment was affirmed per curiam, in the Supreme Court of Florida, and writ of error was taken from this Court.

The Court will note that the judgment is somewhat

peculiar. Plaintiff declared for land in Lot 1 and land in Lot 5, as per survey and plat thereof.

The Court found (see pages 8 and 9 of printed record) for plaintiff as to the land in lot 1, but for the defendant as to that in Lot 5. Exceptions and motion for a new trial were filed by plaintiff, as to the finding for the defendant, and the motion denied. The judgment entered gave the plaintiff only the land in Lot 1, so that he failed to recover the land in Lot 5. It is a final disposition of the case, leaving plaintiff without a part of the land sued for.

There were several other cases involving lands in Lots 1 and 5 (by the later survey) in which plaintiff recovered the lands situated in lot 1, but was denied them in Lot 5. They are retained in the Supreme Court of Florida, upon motions for rehearing, to await the decision in this case.

The patent from the United States to the State for Lot 5 is the only thing which differentiates that lot from Lot 1, as both lots are beyond the meander line of the original survey of 1845.

The jurisdiction of this Court is invoked because plaintiff in error asserted, in the State courts, his right to land in Lot 5, under a patent issued by the United States and the Statutes governing the survey and contents of divisions of the public lands, and this right was denied; and because the rights of the parties also involved a consideration of the swamp land grant of September 28, 1850.

St. Paul & Pa. R. R. Co. v. Schurmeier. 7 Wall 272.

Johnson v. Towsley. 13 Wall 72.

French Glenn Live Stock Co. v. Springer. 22 S. Ct. Rep. 563.

Keen v. Calumet Canal & Imp. Co. 23 S. Ct. Rep. 651.

ERRORS RELIED UPON.

I.

The Court erred in holding that the land in question situated in Lot 5 of Section 19, Township 53 South, Range 42 East, as per survey of 1874, was not conveyed to William H. Gleason, plaintiff's predecessor in the title, by the patent from the United States dated June 24th, 1878, which patent was made in accordance with Gleason's homestead entry, in conformity to the survey and official plat of July 10th, 1845; and in holding that title to said land in said Lot 5 passed to the State of Florida by Tampa patent No. 35, dated May 4th, 1885, through which latter patent defendant claims.

The court found that Lot 1 of the re-survey was embraced in the Gleason patent to Lot 1 of the survey of 1845, although it lies beyond the meander line. By the same principle Lot 5 must also be embraced in that patent. Having granted this land to Gleason in 1878, no title remained in the government to be passed by the later patent to the State.

Stone v. United States. 2 Wall 525.
Hooper v. Scheimer. 23 How. 235.
Johnson v. Towsley. 13 Wall 72.
Gibson v. Chouteau. 13 Wall 92.

II.

The court erred in holding that Lots 1 and 2 of Section 19, Township 53 South, Range 42 East, according to the official plat of July 10, 1845, as patented to William H. Gleason in 1878 did not have a water boundary for their entire length upon the east as shown by said plat, but that the same was bounded upon the east by other land, to-wit, Lot 5, as per the survey of 1874, and that the patent to Gleason did not embrace this land.

The plat by which Gleason made his entry and received his patent showed that he had a water boundary to the entire fractional section on the east. The finding of the State Court gives him a boundary on land (Lot 5) for the south half of the north half of his entry. The rule is that where a section is made fractional by the interference of water an entryman of land shown by the plat to be bounded by the water, takes to the water. This is not a case where the claimant would have to go into another section to reach the water, nor where there is a bayou which may be supposed to be the water meandered, instead of the shore of the bay; but it is a case coming clearly within the rule stated.

Meanders are run to define the general course of the shore and it is not customary to run ordinates from the meander lines to get the exact shore line, in making the government surveys. From this it results that shore lots sometimes contain a considerable excess and sometimes a considerable deficiency of land, as compared with the acreage returned by the surveyors. In the present case the patent was issued after the re-survey had developed the existence of the excess, and the fact that all the land in the fractional section was granted is evidence that the government intended to relinquish any claim it might have to the excess land. Had it been the intention to set aside the survey of 1845 as a fraud on the government, the patent to Gleason would not have been issued in 1878, after the survey of 1874 had exposed the liberality of the first survey in the matter of acreage returned. (The inference is that the patent was based on the survey of 1845 because the homestead entry was made prior to the survey of 1874.)

Harden v. Jordan. 140 U. S. 371.

Mitchell v. Smale. 140 U. S. 406.

Kean v. Calumet Canal & Imp. Co. 23 Sup. Ct. Reporter (W. P. B.) 651.

III & IV.

The Court erred in holding that the patent to William H. Gleason of all of fractional Section 19, said township and range above, was not a decision of the Land Department that the greater part of each lot into which said section was divided by the plat under which the Gleason patent issued, was not swamp and overflowed land, so that no land in said section passed to the State under the Swamp Land Act.

The Court erred in holding that land which appeared to be covered by waters of Biscayne Bay by the official plat in effect September 28, 1850, the date of the swamp land grant, could have been granted by that Act, and in holding that title to the land in controversy in lot 5, as shown by the survey of 1874, passed to the State by the Act of 1850 and was State land at the time of the patent to Gleason, and that the subsequent patent to the State was but a recognition of a title existing in the State since 1850.

The foregoing assignments may be discussed together.

It was argued in the State Courts by the defendant that when the Government patented Lot 5, as per plat of 1875, to the State, this was an adjudication of its swamp character, and as the Act of September 28, 1850 (known as the Swamp Land Act) made a grant of swamp lands in presenti, the title to the lot had really been in the State since September 28, 1850, and the attempt to patent it to Gleason in 1878 was abortive.

The fallacy in the argument is obvious. There was no Lot 5 on September 28, 1850. At that time fractional Section 19 was divided into but two lots, numbered 1 and 2. It was decided by the Land Department that neither of these two lots belonged to the State under the Swamp Land Act, when the patent was issued to Gleason in 1878. The action of the Government in patenting the entire fractional section to Gleason was conclusive as to its non-swamp character.

The department had lost jurisdiction over the matter in 1885 when it attempted to grant Lot 5 to the State.

Titles to lands patented by the Government to private parties, which might by any possibility be classified as swamp, would be very insecure were this position of the defendant tenable.

Brown v. Hitchcock. 19 Sup. Ct. Reporter (W. P. B.) 485.

Rogers Locomotive Machine Works v. American Emigrant Co. 17 Sup. Ct. Rep. 188.

Mich. Land & Lumber Co. v. Rust. 18 Sup. Ct. Rep. 208.

V.

The Court erred in holding invalid the claim of the plaintiff under the Statutes of the United States governing the surveys of the public lands, and the Statutes relating to homestead entries and patents issued thereon to the land in controversy in this suit situated in Lot 5 as shown on the plat of 1874.

Under the Act of February 11, 1805, 2 Statutes at Large 313, Section 2396, U. S. Rev. Stat., Township 53 South, Range 42 East, being made fractional by Biscayne Bay, it was required of the Dept. U. S. Surveyor, that in subdividing it, he should run his section lines to the water. The official plat of 1845 shows that this was done and that fractional Section 19 was bounded east by the bay. The cited Act, in express terms, establishes the boundaries so run as the proper boundaries. (The distance given from the northwest corner of the section to the bay is too short, but the line extends from the section corner to the bay, and the call for distance must give way to the natural boundary.)

Under act of April 5, 1832, 4 Stat. 503 U. S. Rev. Stat. Sec. 2397, and the regulations prescribed by virtue of it, fractional Section 19 was divided into two lots, the first comprising that part of the fractional section lying

north of a line drawn east to the bay, from the half mile post; the other lot comprising the part of the section south of this line.

These two lots were entered as a homestead by Gov. Gleason under the homestead laws and patent followed. Plaintiff sought, in the State courts, to recover a part of the land embraced in Lot 1, as granted, basing his claim upon the patent and laws as to surveys cited. The judgment gave him part, but not all of the land sued for. We conceive that he was entitled to it all.

Geo. M. Robbins.

Counsel ~~Attorney~~ for Plaintiff in Error.

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BRIEF OF DEFENDANT IN ERROR.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

NO. 188.

WILLIAM H. H. GLEASON, Plaintiff In Error,

Vs.

EDWARD L. WHITE, Defendant In Error.

IN ERROR TO THE SUPREME COURT OF THE STATE OF FLORIDA.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM 1904.

No. 188.

WILLIAM H. GLEASON,

Plaintiff in Error,

vs.

EDWARD L. WHITE,

Defendant in Error.

BRIEF OF DEFENDANT IN ERROR.

The only contention in this case is, as to what lands are embraced in the patent to William H. Gleason under his patent for Lots1 and 2 of Section 19, T. 53, S., R. 42 E., according to the plat of the survey of this Township, made by George McCay, approved July 10, 1845.

There are two plats of this survey, both approved July 10th, 1845. (See printed record, between pages 32 and 33.) On the first, marked "Exhibit A", the north boundary line of Section 19 is much longer than the south boundary thereof, and conforms in this respect to the line as run by M. A. Williams in his survey of 1874, approved February 1st, 1875. (See printed record, pages 26 to 27.)

An examination of the two plats, pages 32 to 33, will show a striking difference in the Bay front as represented on

these two plats. That on Exhibit A sounds decidedly north easterly; on the other the line is represented by a straight line, commencing at a point 23.63 chs., east of southwest quarter of the section (28), and running thence, north, 2 degrees, 0 m., 80.00 chs., to a point on the north boundary line, 18.80 chs., east from the north west corner of the same section.

The rule stated by Plaintiff in Error that "where a section is made fractional by the meanderings of water, as an stream of land shown by the plat to be bounded by the water, takes to the water," is true only in cases where the boundaries and meander lines have been run by the surveyor and described in the field notes returned to the Surveyor General's office.

It is familiar knowledge to this court that plats of public lands surveys are framed in the Surveyor General's office according to the field notes of such surveys returned to the office by the deputy surveyor. No plats should be held legal which do not substantially conform to the requirements of the statute of the United States on the subject.

On page 3 of Plaintiff in Error's brief, he says, "under the act of February 15th, 1805, and Stat. at Large, Sec. 2395, U. S. Rev. Stat., Township 38 South, Range 35 East, being made fractional by Biscayne Bay, it was required of the Dept. Surveyor, that in subdividing it he should run the section lines to the water."

He says further, "the official plat of 1845 shows that this was done and that fractional Section 10 was bounded east by the Bay." The Act cited, in express terms establishes the boundaries as run as the proper boundaries." "By the terms as run" must be shown by the Field Notes which are the only legal evidence that they were so run and not by the plat.

The requirements of the statute are general and relate to the subdivisions of sections in the interior of townships. The only survey of this Township, made in 1845, was made by George Hunting under contract dated February 15, 1845, under which only the exterior lines of the Township were run.

...ation, as certified to by W. M. Stone, acting Commissioner of the General Land Office, on page 10, printed record. Appended to this certificate are the field notes of the survey of T. 10 S., R. 1 W., W. M. The affidavit of George Bell (p. 11, R.), is appended to the field notes, in which he swears that to permission of the contract [illegible] conformity to the laws of the United States and instructions of said Surveyor General, he had "diligently surveyed the exterior Township lines therein mentioned" etc., and that the foregoing are the true and original field notes thereof.

On the field notes of this survey an entry is made of [illegible] subdivisional lines, but only the western boundary of Section 34, in this township is described, which is a Range line. The plat of this township, of the survey of 1851, was framed and based upon the field notes of this survey, appears on page 12 etc. (6) of [illegible]. The portion of [illegible] is one of those some of the north or south boundary [illegible] any township on the east boundary of the State of Oregon. The [illegible] that these lines [illegible] and [illegible] [illegible] as they appear on the plat, were run to the [illegible] as ascertained by any [illegible] evidence [illegible] [illegible] of official notice.

There is positive proof in the record that they were run by the survey of 1851. The field notes of the [illegible] of the section, made by W. M. Stone, Page Surveyor, in 1874, and found on pages 20 and 21, printed record, running east from the north west corner of Section 3, describe the north boundary as follows:

"The east line, between sections [illegible]
40 ch. to [illegible] set [illegible] and [illegible] [illegible]
Bearings
[illegible] to [illegible] [illegible]
[illegible] to [illegible] [illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible] to [illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[

was simply plotted by the draughtsman to show the area of the lot. The rule "That the call for distance must give way to the natural boundary," applies only to cases where the field notes show that the line was actually run to such boundary.

The natural boundary, as shown by the survey and field notes of M. A. Williams, in 1874, is fully 40.11 chains East of the North East corner of Lot 1 on the plat of 1845.

It is known to the Court that official plats must be drawn from the field notes, that field notes are required of all government surveys, and that these, when returned to office, govern the preparation of the plat of the surveys.

Take the case under consideration to illustrate the point here made. How could the draughtsman, who prepared the plat under which the entry was made, know the distance of the north east corner of lot 1 from the section corner, without some field notes showing this distance; or how could he know the distance of the Bay line from the north west corner of the section in the absence of field notes showing these distances. Yet the maker of the plat of 1845 has located the north east corner of Lot 1, on the Bay line of the plat, just 19.81 chains from the north-west corner of the section; when *in fact*, the Bay or water line was 59.92 chains from the north-west corner of the section. This is shown by the field notes of the survey of this line, made by M. A. Williams, in which he describes this line as running through pine land a distance of 44 chains from the starting point where he struck prairie land and so on, through prairie and saw-grass to the Bay, at a point 59.92 chains east of the north-west corner post. The whole of this north boundary line was chained, and described in his field notes. The old quarter section post, which he found in running this line, stood 20.54 chains, in pine woods, east from the north east corner of Lot 1 of the plat of 1845. The plat made from Williams' field notes shows the aggregate area of this section to be 337.76 acres, or 172.92 acres *in excess* of Gleason's entry, for which excess no payment was made. Considering all of the foregoing facts, surely the plat of 1845 cannot be held to be binding upon the Government, except as

to the actual area of Lot 1, as shown on the plat of 1845, which does not touch the land involved in this suit. Finally, this plat of 1845 was proven to be absolutely incorrect by the re-survey of the same township by M. A. Williams in 1874-5, and was virtually withdrawn by the Commissioner of the General Land Office by his order for its survey. This re-survey was ordered at the request of William H. Gleason, through J. W. Gilbert, Surveyor General, at Tallahassee, Florida who states, that "the re-survey of T. 53, S. R. 42 E. is requested by Hon. Wm. H. Gleason, who states that the original survey is entirely, or almost entirely obliterated, and it is imposible for the settlers there to enter their land in consequence." See this letter, page 32 printed record. This is strong corroborative evidence that no interior subdivisional survey was made of this township in 1845, and therefore there was no original survey to be obliterated, which accounts for the absence of any field notes of a subdivisional survey of this township in 1845.

It is unnecessary to discuss the other points made in the brief of Plaintiff in Error, as they all depend upon the decision of the question of boundary, raised in this suit.

Respectfully submitted.

Edward L. White

.....

in propria persona.

Supreme Court of the United States.

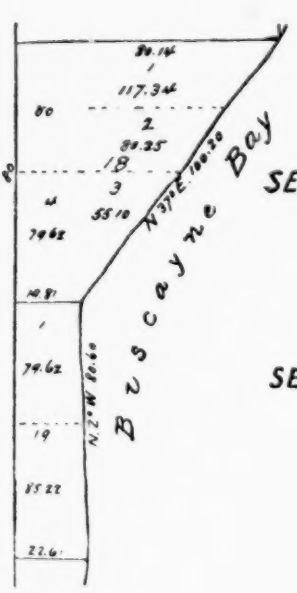
No. 188.—October Term, 1904.

William H. H. Gleason, Plaintiff in Error, vs. Edward L. White. } In error to the Supreme Court of the State of Florida.

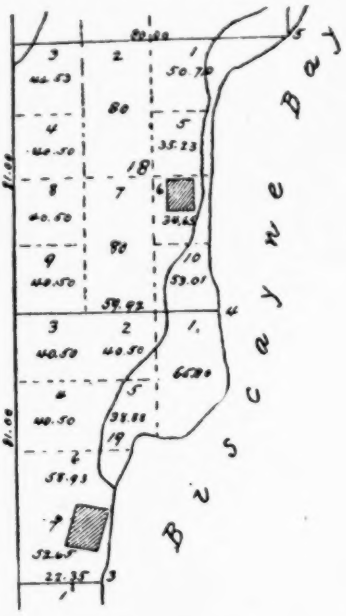
[May 29, 1905.]

In 1845 fractional township 53 south, range 42 west, in Dade County, Florida, was surveyed and a plat thereof was approved and filed in the office of the surveyor general in Florida, and also in the office of the Land Department of Washington. By this survey fractional section 19 was divided into two lots, numbered 1 and 2, containing 164.84 acres. In 1875 a resurvey was made of the township, plats of which were also duly approved and filed in the office of the surveyor general in Florida and with the Land Department at Washington. By this new survey said section 19 was divided into 7 lots, containing in the aggregate 337.76 acres. The difference between the two surveys of section 19 is shown in the following plats:

Plat 1845.



Plat 1875.



On June 24, 1878, a patent was issued to William H. Gleason, on a homestead application, for a tract described as lots 1 and 2 of section 19, containing 164.84 acres, according to the official plat of the survey of 1845. Plaintiff in error, who was plaintiff below, claims by deed from the patentee. On May 4, 1885, lot 5 of section 19, according to the survey in 1875, was patented by the United States to Florida as swamp land, and thereafter deeded by the State to the defendant. In 1898 this action to recover a part of lot 5 was commenced in the Circuit Court of the Seventh Judicial Circuit of Florida, in and for Dade County. The case was tried by the court without a jury; a judgment rendered for the defendant was affirmed by the Supreme Court of the State, and thereafter brought to this court on writ of error. Included in the action was lot 1 of section 19, as shown by the plat of 1875, but as judgment was rendered for the plaintiff in respect to that tract, it is unnecessary to further refer to it. There was a stipulation as to certain facts, with a provision that testimony of further facts might be received, and that the court might view the premises. The findings of the court recite that it viewed the premises, and upon the stipulated facts, and further testimony incorporated in a bill of exceptions, found generally for the defendant as to lot 5.

Mr. Justice BREWER delivered the opinion of the Court.

The case was tried by the court without a jury. No special findings of fact having been made, and the proceedings in the trial court having been approved by the Supreme Court of the State, without an opinion, we must affirm the judgment if there be evidence sufficient to sustain it, although there may be other testimony of a contradictory nature. It is not our province to weigh conflicting testimony in a case coming to us as this does.

It is undoubtedly true that the official surveys of the public lands of the United States are controlling. *Stoneroad* v. *Stoneroad*, 158 U. S. 240; *Russell* v. *Maxwell Land Grant Co.*, Id. 253; *United States* v. *Montana Lumber and Manufacturing Co.*, 196 U. S. 573; *Whitaker* v. *McBride*, 197 U. S. 510. Here we have two conflicting official surveys and plats, and, by mistake of the Land Department, two patents have been issued, which, in a certain aspect of the surveys and plats, also conflict. It is one of those unfortunate mistakes which sometimes occur, and which necessarily throw confusion and doubt upon titles. Since it was discovered the Land Department has wisely refused to extend the confusion by further patents under the survey of 1875.

The patent to Gleason was three years after the last survey, which, in so far as it conflicted with the prior survey, superseded that and became the official record of the Land Department. Notwithstanding this, the patent purports to convey lots 1 and 2 as shown by the survey of 1845. Undoubt-

edly the mistake arose because the homestead entry, which must have been five years before the patent, was made before the survey of 1875, and at that time the official record was the plat of 1845, which showed only the two lots. Through carelessness, and not recognizing the change made by the survey of 1875, the patent refers to the survey of 1845, relying upon the description in the homestead entry. The land patented amounted to 168.84 acres. The homestead law allowed one to enter 160 acres, and as the patent covered 4.84 acres more than the amount allowed for a homestead, the patentee paid the Government price for the excess, $6.05. The contract of McKay for the survey of 1845 was a contract to survey the exterior lines of township 53, and while the field notes of the west line of the township are preserved, his notes of the east and subdivision lines are not to be found in the Land Department. The plat, as will be seen, shows an east line running north 2° west, 80.60 chains, a south line 22.61 chains from the west line, and a north line 19.81 chains, making almost a rectangle, and containing the number of acres described in the patent. East of this township appears Biscayne Bay, according to each plat. The plat made in 1875 shows a south line of 22.35 chains, very nearly the same as that of the plat of 1845, but the north line is 59.92 chains, making an almost complete quarter of the N. W. sec. 19. The field notes of the survey of 1875 show that the surveyor found on the line between sections 18 and 19, at a distance of 40.35 chains from the west township line, an old quarter section post, and set a new one in place of it. It would seem a not unreasonable conclusion from this that McKay in 1845 in fact surveyed a tract of land east of lots 1 and 2, but that when the plat was made either his field notes had disappeared or were ignored in running the lines of the north half of section 19. It further appears that the survey of 1875 was requested by the patentee, William H. Gleason, who stated that the survey of the entire township was entirely or almost entirely obliterated. It also appears that Gleason, when he received his patent, took title to what was substantially the west half of the northwest quarter and the west half of the southwest quarter of section 19, the east line, as shown by the plat, being almost a straight line, running north and south. It does not seem that he could have been mistaken as to the land that he was acquiring from the Government, for he must have lived on it five years in order to have perfected his homestead. He could not have been ignorant of the large tract lying east of what was described in the plat of 1845 as "lot 1." The official plat at the time of the patent was the plat of the survey of 1875. He was chargeable as matter of law with notice of that plat. More than that, as the survey was at his instance, it is a reasonable assumption that he knew in fact what the lines of that survey and plat were. Under those circumstances full justice is done if a patent title to lands outside his lines as shown by the plat of 1845, is

sustained, for he still is protected in the tract bounded by those lines and amounting to 164.84 acres. To give him twice that amount of land would be enabling him to profit by a mistake of the Government—a mistake of which he was cognizant. Under those circumstances we are of opinion that the judgment of the Supreme Court of Florida must be and it is

Affirmed.

True copy.

Test:

Clerk Supreme Court, U. S.